

DECLARATION OF BRIAN BRADY

DECLARATION OF BRIAN BRADY

1. I serve as the Chief Executive Officer for Northwest Broadcasting, Inc. (“Northwest”). I affirm that the following is a true and accurate representation of the events surrounding the negotiations between Northwest and Charter Communications, Inc. d.b.a. Spectrum (“Charter”) to renew or execute a new agreement for Charter to carry Northwest’s channels on Charter’s cable system.

2. Northwest operates the channels KYMA and KSWT, the affiliates of NBC and CBS respectively in Yuma, Arizona and its surrounding areas, and KPVI, an NBC affiliate serving Jackson, WY from its base in Idaho Falls/Pocatello, ID. In addition, Northwest owns or operates stations in Eureka, CA, Medford OR, Yakima-Tri Cities, WA, Spokane, WA, Greenville/Greenwood, MS, Binghamton, NY and Syracuse, NY. On December 20, 2016, following the acquisition of Time Warner by Charter, Charter exercised the right granted by Northwest to Time Warner, to extend the then existing Northwest/Time Warner retransmission consent agreement (“Contract”). The term of the Contract expired on January 31, 2018.

3. Eight months prior to the expiration of the Contract, Northwest reached out to Charter to begin negotiations to renew the Contract, or execute a new agreement, to allow Charter to continue carrying KPVI, KYMA, and KSWT. I was personally involved in all negotiations with Charter regarding the Contract. Approximately two weeks before the expiration of the Contract, Charter gave Northwest an oral contract proposal, but Charter did not put its proposal in writing until 4:00pm Eastern time on February 2, 2018, two days after the existing agreement had expired.

4. Despite the expiration of the agreement and the lack of a written proposal from Charter, Northwest agreed to multiple 24 hour extensions through February 2, 2018 in the hope

of reaching an agreement with Charter. As mentioned above, Charter finally submitted a written proposal at 4:00pm Eastern time on February 2, 2018 at which point Northwest offered an extension through February 3, 2018, to allow it time to review and respond to Charter's written proposal. Charter requested an extension to February 5, 2018 so its customers could watch the Super Bowl, but that request also stated that on February 5, 2018, Charter would pull the Northwest stations covered by the Contract, including KPVI, KYMA, and KSWT from its cable system. Northwest denied Charter's request, and again offered to extend to February 3, 2018 to allow negotiations to continue. Northwest told Charter if an extension past February 3, 2018 was necessary, Northwest would be happy to discuss it. At approximately 4:50p.m. Eastern time, Charter refused Northwest's offer to extend the Contract to February 3, 2018, and told Northwest that Charter was removing KPVI, KYM,A and KSWT (and all other channels covered by the Contract) at 5:00p.m. Eastern time. Charter removed KPVI, KYMA, and KSWT from its cable system at 5:00p.m. Eastern time.

5. Not only did Charter not ask for a 30-day extension to the Contract at any point in the negotiations, it did not ask for any extensions prior to the original expiration date — January 31, 2018 — of the Contract. At the time Charter removed all of the Northwest stations covered by the Contract, including KPVI, KYMA, and KSWT from its cable system, Northwest was willing to grant Charter further extensions to carry the channels. Northwest never had any intent of denying Charter from carrying any of its channels, including KPVI, KYMA, and KSWT, on Charter's cable system.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated March 14, 2018



Brian Brady, Chief Executive Officer
Northwest Broadcasting, Inc.

DECLARATION OF GREGORY K. WILKINSON

DECLARATION OF GREGORY K. WILKINSON

1. I serve as the City Administrator of the City of Yuma, Arizona. I affirm that the following is a true and accurate representation of the events surrounding the removal of KYMA and KSWT, the local affiliates of NBC and CBS respectively, from Charter Communications, Inc. ("Charter") cable system in Yuma.

2. On Friday, February 2, 2018, at 3:31 p.m. local time (5:31 p.m. Eastern time), I received an email from Laurence Schott, a Senior Director State Government Affairs for Charter, stating that Charter stopped broadcasting KYMA and KSWT at 5:00 p.m. Eastern time (3:00 p.m. local time) on Friday, February 2, 2018. *See* attached Exhibit A. Mr. Schott's email was the first correspondence I received, and to my knowledge that any person at the City had received, from Charter indicating that the KYMA and KSWT were going to be removed from Charter's cable system.

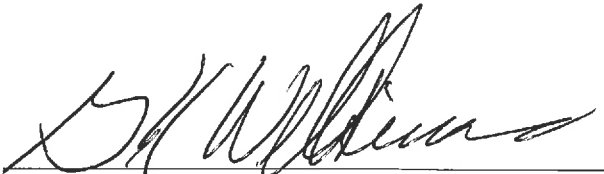
3. Charter is the only cable service available within the City and Yuma County area. Charter's removal of the channels created a significant amount frustration and anger among the City's residents. Using residents as a negotiating tool is inexcusable with the Super Bowl coming up two days later, followed by the Olympics. Residents were unable to watch the Super Bowl and Winter Olympics on their televisions. With March Madness also coming up residents will not be able to watch the tournaments at home, a service they are paying for. Although Charter provided instructions for its subscribers to live stream NBC and CBS online, those instructions were misleading and is not available to many customers due to lack of broadband adequate to stream video in the rural areas. I am a Charter cable service subscriber, and I was unable to stream the Super Bowl or Olympic events on NBC on the Internet as Charter had indicated. As service has decreased and costs to Charter have dropped since not paying to carry

NBC, CBS, and Fox in some areas they have offered no rebates to customers which are now paying for a service they are not getting. Additionally, Charter just increased their rates by \$15 per month. I have received similar reports from other City residents who attempted to stream live events, such as the Olympics, on NBC

4. On February 6, 2018, the City sent Charter a notice of violation of Charter's cable license and of the FCC regulations. *See* attached Exhibit B. The City's notice stated that the City had the ability to collect liquidated damages from Charter's security fund, but the City has not yet drawn on the securities. On February 19, 2018, Charter responded to the City's notice and denied any violation of the license or FCC regulations.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated - March 13, 2018



Gregory K. Wilkinson, City Administrator
City of Yuma, Arizona

EXHIBIT A TO DECLARATION OF GREGORY K. WILKINSON

From: "Schott, Laurence F" <Laurence.Schott@charter.com>

Date: February 2, 2018 at 3:31:12 PM MST

To: "Greg Wilkinson " <greg.wilkinson@yumaaz.gov>

Subject: Northwest Broadcasting Blacked Out Stations

Greg,

We wanted to let you know that, at 5:00 p.m. Eastern today, Northwest Broadcasting pulled their broadcast signals from Charter Communications, affecting subscribers in Yuma, Arizona. Charter was hoping to reach a fair deal, and we are disappointed that Northwest refused to come off their demand for a rate that is higher than what we have ever paid any other broadcaster.

The following stations that Northwest Broadcasting has blacked out in your area are **KWST – CBS and KYMA – NBC.**

We hope that this issue will be resolved quickly. In the meantime, we are doing all that we can to minimize the impact on customers including communicating to them about alternative means to access programming that they will be unable to view on Northwest channels, especially the Super Bowl (February 4) and the Olympics (February 9-25) that are both coming up on NBC. Attached is a one-page description of options to assist you in answering questions from members of your community.

Attached is a one-page description of options to assist you in answering questions from your constituents. More information about this Northwest initiated blackout can be found at NorthwestFairDeal.com

I am sending emails to affected officials and will be available to discuss additional details if you would like.

Buz

The Situation:

Most of the time our customers never hear about contract negotiations between cable providers and broadcasters. On occasion however, an agreement can't be reached immediately. We are disappointed that, despite our best efforts, Northwest Broadcasting is demanding that we pay them significantly more than we pay any other broadcast station. We hope this issue will be resolved quickly. In the meantime, Charter Spectrum is doing all that we can to minimize the impact on customers including communicating to them about alternative means to access programming that they will be unable to view on Northwest Channels.

Broadcast Channels



Alternative Programming Sources:

- Full episodes of NBC programming are available at NBC.com
- Fox programming is available at Fox.com
- Me TV programming is available at MeTV.com
- Broadcast channels are available over the air using an antenna

Must-Have NBC Programming



Super Bowl:

- Free streaming of the Super Bowl will be available on NBCSports.com and the NBC Sports App as well as the NFL Mobile App



The Olympics:

- Live streaming of the Olympics will be available to subscribers of USA Network on the NBC Sports App
 - Customers who don't subscribe to USA Network will be provided a "free preview" for 30 days in Northwest's NBC markets enabling them to access Olympic programming on the USA Network channel or through the Spectrum TV App

EXHIBIT B TO DECLARATION OF GREGORY K. WILKINSON



City Attorney's Office
One City Plaza
Yuma, Arizona 85364
(928) 373-5050
Fax (928) 373-5053
TTY (928) 373-5149
www.YumaAz.gov
Daniel.White@YumaAZ.gov

February 5, 2018

Sent via U.S. Mail and E-mail

John Fogarty
Charter Communications
10450 Pacific Center Ct.
San Diego, CA 92121

RE: *Customer Notification for Interruption of Service*

Dear Mr. Fogarty,

Notice.

This letter serves as notice of Time Warner Cable Pacific West LLC's, a subsidiary of Charter Communications, Inc. ("Charter") breach Section 8 "Consumer Protection Provisions" of its a nonexclusive license to provide cable services within the City of Yuma ("License"). As required by Section 15 of the License, the City is sending a copy of this Notice by mail to the addresses listed in the License. The City notes that Charter has not provided alternative addresses to which to provide Notice, pursuant to the License.

Charter stopped broadcasting KYMA and KSWT, the local affiliates of NBC and CBS respectively, at 5:00 p.m. Eastern time (3:00 p.m. local time) on Friday, February 2, 2018.

Charter did not notify its subscribers until 5:03 p.m. local time (7:03 p.m. Eastern). *See* attached Exhibit A.

Charter also did not notify the City that the channels would be removed until 3:31 p.m. local time (5:31 p.m. Eastern). *See* attached Exhibit B.

Each of these actions is a material breach of Charter's License, and violates federal requirements.

1. Section 8 of the License generally requires Charter to comply with all federal customer service standards and consumer protection provisions of federal law. The FCC's regulations, 47 C.F.R. Section 76.1603(b) provides that "[c]ustomers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator...." Charter's actions here appear similar to those the FCC found violated its rules in *In the Matter of: Time Warner Cable, A Div. of Time Warner Entm't Co., L.P.*, 21 F.C.C. Rcd. 9016, 9021 (2006).

2. In addition, Section 8(i) of the License specifically provides that when Charter alters the service it provides to a class of Subscribers, Charter must provide "each Subscriber thirty (30) days' notice, explain the substance and full effect of the alteration, and provide the Subscriber the right within the thirty (30) day period following notice to opt to receive any combination of services offered by the Licensee." One of the goals of this section is to permit subscribers to reduce service, or drop it

altogether should you choose to eliminate important programming. In this case, Charter is choosing to drop carriage in a way that affected access to the Super Bowl and to the Olympics, without the required notice.

3. Section 8(f) of the License states that Charter “may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of forty-eight (48) hours prior notice to Subscribers and the City of the anticipated service interruption”

Charter’s notice to subscribers was deficient for obvious reasons. Charter’s notification to the City of the removal of KYMA and KSWT violates the License for two reasons. First, Charter did not provide the City with 48 hours prior notice of the interruption of service. Indeed, the notice came *after* the interruption began. Second, Charter’s notice to the City – an email – violated the notice requirements of Section 15(d) of the License. In Section 15(d), Charter is required to send notice required under the License by first class mail, to the City Administrator and City Attorney. Here, Charter’s notice came by email and did not include the City Attorney’s office.

It bears emphasizing that all of the notice requirements require notice *prior* to ceasing carriage. Even if one assumes that Charter’s decision to stop carriage was “beyond its control” – and nothing Charter has provided suggests that this is the case – there is no excuse for failure to provide notice more than 2 hours after carriage had stopped. As far as the City can determine, the service interruption was anticipated. It’s the City’s understanding that Charter’s contract with Northwest Broadcasting, the owner of KYMA and KSWT, (“Northwest”) had expired and that both were actively engaged in contract negotiations. Northwest and Charter had already negotiated multiple temporary extensions of service and Northwest was prepared to offer Charter another extension, but Charter gave Northwest less than five minutes notice before Charter removed the channels from Charter’s cable system.

Remedies.

You need to take immediate action to cure, which should include restoring the channels at least until you are able to provide the required notices.

As Charter is well aware, the FCC has imposed penalties and forfeitures for the failure to provide notice in the past, and the City reserves the right to take any action it believes is in its interest to pursue remedies at the FCC that may be available to it or its citizens.

In addition, the franchise, Section 8(g), specifically contemplates that subscribers will receive a credit if service is substantially impaired. The subscribers’ service has been substantially impaired, and the City expects that Charter will provide a credit to all subscribers for the impairment of service. This credit is consistent with the FCC decisions cited above. While dropping a channel with notice may not be an actionable impairment, a decision to simply drop important programming without notice is an impairment.

This letter also serves as Charter’s notice that the failure to timely notify the City and the subscribers of the interruption in service is subject to liquidated damages, pursuant to Section 12(d) of the License. Moreover, the City believes that those damages in the amount of \$864.39 per day began to accrue immediately upon breach pursuant to Section 12(d)(vi) (the tolling prescribed in that section does not apply as the City is by this letter providing Charter notice that it objects to Charter’s failure to comply), and will continue either until service is restored, or until you have complied with the 30-day notice provisions cited above.

This letter will also serve as notice that the City may begin to draw upon the securities you provided as soon as permitted under Section 12(a)(5) of the License.

The City further reminds Charter that the License requires notices to the City to be mailed to both the City Administrator and the City Attorney’s office. Please include me in any future correspondence, including emails, regarding the License, including changes to programming, fees, and support.

Information.

Charter may contend that its actions were not a violation of the License, or were excused by the conduct of Northwest. If that is Charter's contention, then pursuant to Section 7 of the License, Charter must provide copies of all documents related to the decision of Charter, any Affiliate, any cable operator of the Cable System, or any Person holding any form of management contract for the Cable System that discuss:

- (a) the timing of the notice provided to the City and to subscribers in Yuma;
- (b) the decision to cease carriage of the stations; and
- (c) the last offers (if any) for carriage or extension of carriage of the stations from the stations, and the last offer from the company.

We also ask that you provide:

- (d) the offers referenced in request (c); and
- (e) all communications with the stations on the day the station carriage was stopped, and the day before.

We remind you that under Section 7, and especially Section 7(k), confidentiality is not a ground for withholding documents.

Please call me if you have any questions.

Regards,

Daniel R. White
Assistant City Attorney

cc: Laurence Schott, Senior Director Government Affairs
Del J. Heintz, Senior Director State Government Affairs West Region
Gregory K. Wilkinson, City Administrator
Joseph Van Eaton, Best Best & Krieger LLP

EXHIBIT C TO DECLARATION OF GREGORY K. WILKINSON

February 19, 2018

Daniel R. White
Assistant City Attorney
City Attorney's Office
One City Plaza
Yuma, AZ 85364

Re: Customer Notification for Interruption of Service

Dear Mr. White:

This letter responds to the City of Yuma's ("City's") February 6, 2018 letter to Charter Communications, Inc. and its subsidiary, Time Warner Cable Pacific West LLC (collectively, "Charter") ("February 6 Letter"), alleging that Charter's notice to subscribers of the decision by Northwest Broadcasting, Inc. ("Northwest") to pull the authorization for the signals of television stations KYMA and KSWT materially breached various notice provisions in Charter's nonexclusive license to provide cable services with the City ("License"). Charter respectfully disagrees with the City's allegations. As explained in more detail below, Northwest's decision to pull the authorization for these signals was not within Charter's control.¹ Under these circumstances, Charter has fully complied with the applicable notice provisions in the License and the related rules of the Federal Communications Commission ("FCC" or "Commission").

Carriage Negotiations with Northwest. Negotiations between cable operators and broadcasters usually come down to the final 30 days of an agreement—indeed, often down to the final day or hours. The negotiations between Charter and Northwest were no different. Charter and Northwest originally began carriage negotiations on October 11, 2017, for the carriage agreement that was set to expire on January 31, 2018. During November, December, and January, Charter and Northwest engaged in ongoing discussions, with both parties providing various proposals and counterproposals in an attempt to reach agreement prior to the January 31, 2018 expiration of their carriage agreement. Northwest's initial proposal was without precedent: it would have increased carriage fees for its two Yuma stations by 140 percent over current rates, to a per subscriber level more than double the rate Charter pays any other broadcaster in the entire country, despite the fact that KSWT's ratings declined by 18 percent and KYMA's by nearly 22 percent over the last five years. While Charter was prepared for a reasonable increase in carriage fees over the expiring agreement, it could not and would not agree to such an unwarranted increase—an increase that would substantially and unfairly impact our customers.

¹ Contrary to Northwest's claims, Charter did not pull the KYMA and KSWT signals. Indeed, Northwest itself posted a message shortly after talks broke down acknowledging that negotiations had been proceeding "in good faith," but that they had reached "a standstill" and that consequently "Charter no longer has the rights to carry our programming." A representative example of Northwest's messaging, which also appeared on Northwest's Yuma stations, is attached to this letter. See Attachment A.

On Wednesday, January 31, Charter and Northwest agreed to a 24-hour extension of the existing carriage agreement. On Thursday, February 1, Charter and Northwest agreed to another 24-hour extension while discussions continued. On Friday, February 2, Charter offered a further increase in carriage fees over its prior proposal, and asked for an extension through Sunday, February 4, so that its subscribers would be able to watch the Super Bowl, with a promise to work through the entire weekend in an attempt to reach a long term deal. Northwest rejected this proposal, countered with a proposal that was still 80 percent higher than current rates, and offered only a seven-hour extension through midnight of February 2. Northwest having refused Charter's extension request, negotiations under the existing carriage agreement came to an end.² Under the terms of the agreement, Northwest terminated Charter's authorization to carry KYMA and KSWT at 5:00 pm Eastern Standard Time ("EST") on February 2.

Requests for exorbitant increases in fees and an unwillingness to reach a reasonable resolution of these issues has become a pattern with Northwest in programming carriage negotiations. In the last several years alone, Northwest's tactics have led to blackouts with video distributors around the country including with Verizon FiOS and Cable One in 2017, and both DirecTV and DISH Network a few years before. On the other hand, Charter has negotiated fairly and successfully for carriage with hundreds of broadcast stations and has not had a single blackout with even one of any other broadcaster's top four (ABC, NBC, CBS or FOX) affiliated stations.

Notice to Subscribers and the City. Charter had hoped for a mutually beneficial resolution with Northwest, and kept the City apprised of the negotiations. Charter contacted the City twice on January 31 to provide an update on the negotiations, including the 24-hour extension that day. While a resolution remained possible, it would have only created confusion for Charter to provide its subscribers with advance notice of a potential loss of the signals. Once Northwest discontinued its authorization for Charter to carry KYMA and KSWT, however, Charter immediately provided notice to its affected subscribers making on-air announcements within minutes of Northwest pulling its authorization for Charter to carry the signals, sending emails, and creating a website where they could get additional information about the blackout.³ Charter also emailed the City at around the same time.⁴

No Breach of the License. Charter's notice satisfied Section 8 of the License and the FCC's notice rule. As you note, Section 8(a) requires Charter to comply with federal customer service standards. The relevant FCC rule, Section 76.1603(b), requires customers to be notified

² The City requests a wide array of documents related to Charter's retransmission consent negotiations with Northwest. See February 6 Letter at 2-3. These documents are highly confidential and relate to Charter's negotiations with a third party on a matter outside the scope of the License. Charter therefore believes there is some question as to whether the City's document request is authorized under Section 7 of the License, which covers "books and records . . . which are *relevant to compliance with this License*." See Cable Television License Agreement between the City of Yuma, Arizona and Time Warner Cable Pacific West LLC, § 7(a) (Mar. 2015) ("Yuma License"). Nonetheless, in the interest of cooperation, Charter is voluntarily providing its email exchanges with Northwest between January 31 and February 2 demonstrating that it continued to negotiate up until Northwest terminated the agreement, and specifically that it requested an extension of the agreement through the Super Bowl and Northwest refused. See Attachment B.

³ See Northwest Deal Homepage, <https://www.northwestfairdeal.com/> (last visited Feb. 19, 2018).

⁴ See Attachment C.

of any changes in rates, programming services or channel positions “as soon as possible.”⁵ While it also requires notice to be “given to subscribers a minimum of thirty (30) days in advance of such changes,” this obligation applies only “if the change is *within the control* of the cable operator.”⁶ As explained above, Charter provided notice of the blackout to its Yuma subscribers “as soon as possible” after learning that Northwest had terminated its authorization for Charter to retransmit the signals of KYMA and KSWT. Section 76.1603(b)’s additional requirement to provide 30-day advance notice is inapplicable here because the programming change was not “within the control” of Charter. It was Northwest’s decision, not Charter’s, to remove the channels from Charter’s cable service. Charter indicated its willingness to Northwest to continue carrying the signals of the two stations under the existing terms and conditions while negotiations continued. Because Charter does not own or control the broadcast signal or the content transmitted by the stations, it is prohibited from carrying it without explicit authorization from the broadcast licensee.⁷

The FCC’s *NFL Network Reconsideration Order* you cite is not applicable here. In the *NFL Network* case, the FCC’s determination that Time Warner Cable’s decision to drop the NFL Network was “within its control” rested on the fact that Time Warner Cable rejected the NFL Network’s offer to continue carriage on pre-existing terms and conditions for 30 days.⁸ Here, Northwest only provided Charter with a series of 24-hour extensions and refused to extend the agreement for a few days, much less an entire month on pre-existing terms and conditions.

Similarly, Charter has not violated either Sections 8(i) or (f) of its License. Section 8(i) requires Charter to provide its subscribers with 30 days’ notice “[a]t the time [it] alters the service it provides.”⁹ As a threshold matter, Charter disputes that this provision is even applicable to the loss of authorization to carry a particular channel or channels; that event is addressed in Section 8(a). Nevertheless, Charter did not *alter* its service (as would be the case if it had split an existing tier into two tiers); rather, it lost the right to carry KYMA and KSWT after Northwest withdrew the authorization required by federal law¹⁰ for Charter to do so. Even assuming *arguendo* that Section 8(i) applies here, as indicated above, Charter provided the required subscriber notice “at the time” it lost authorization to carry the two stations.¹¹ In any

⁵ 47 C.F.R. § 76.1603(b).

⁶ *Id.* (emphasis added).

⁷ See 47 U.S.C. § 325(b)(1)(A) (barring cable operator retransmission of a broadcast signal, except with the “express authority of the originating station”); 17 U.S.C. § 111(c)(1) (granting cable systems a copyright license for the retransmission of broadcast content, but only where carriage of the broadcast station is “permissible under the rules, regulations, or authorizations of the Federal Communications Commission.”).

⁸ See *In re Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, 9021 ¶ 17 (MB 2006) (“*NFL Network Reconsideration Order*”). As the Media Bureau explained, “[h]ad the NFL been unwilling to provide Time Warner with the legal right to continue to carry its programming, this might well have been a different case.” *Id.*

⁹ Yuma License § 8(i).

¹⁰ See *supra* note 7. The City’s demand that Charter take “immediate action” to “restor[e]” the channels is likewise preempted by this requirement of federal law. See February 6 Letter at 2.

¹¹ Notably, Section 8(i) does not require 30 days’ advance notice of a service alteration. Rather, the 30 days appears to be the required post-notice window in which a subscriber must be permitted, in the wake of an alteration, “to opt to receive any combination of services offered by the Licensee.” Yuma License § 8(i).

event, because Charter does not require contracts with its subscribers, subscribers may always opt to receive any combination of services offered by the Licensee and certainly will be able to do so within the 30-day period mandated by the License.

Finally, Section 8(f) is likewise totally inapplicable here. That provision requires Charter to provide 48 hours' advance notice to the City and its subscribers before it "intentionally interrupt[s] service."¹² That provision addresses temporary service interruptions within the control of Charter, for matters such as maintenance.¹³ The loss of the legal authority to retransmit broadcast stations is not an intentional interruption of service contemplated by this provision and, in fact, was not "intentional" at all. As explained above, Northwest informed Charter on Friday, February 2 that it planned to pull the authorization for Charter to carry KYMA and KSWT at 5:00 pm EST that day. Thus, the loss of KYMA and KSWT resulted solely from Northwest's unilateral decision to withdraw retransmission consent, and not from any "intentional" action by Charter. Throughout the negotiations, Charter consistently sought to continue carrying the signals on a mutually acceptable agreement that achieved a fair price for both parties as well as subscribers.

For the foregoing reasons, Charter has met its obligations under both Section 76.1603(b) of the FCC's rules and Section 8 of its License. It therefore is not in breach of its License, and the City's demands for liquidated damages and its threat to draw down the security fund under Section 12 of the License are consequently without legal basis.¹⁴

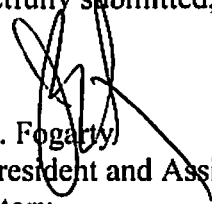
We continue to work toward reaching a fair agreement that is in the best interests of our customers. Charter values the partnership it has forged with Yuma, appreciates the rights granted by its franchise to serve the City, and looks forward to continuing to provide the best cable programming, entertainment, and communications services to its subscribers and your constituents. Please contact me should you have any additional questions.

¹² *Id.* § 8(f).

¹³ *See id.* (exempting from the 48-hour notice requirement "planned maintenance that does not require more than two (2) hours' interruption of service").

¹⁴ As noted above, Charter lacks the authorization required by federal law to carry KYMA and KSWT. *See supra* note 7. Under these circumstances, it is unreasonable and unlawful for the City to impose damages on Charter for the loss of these channels. In effect, the City seeks to fine Charter for failing to reach a retransmission consent agreement with Northwest. Such an action amounts to intervening in Charter's carriage negotiations to put pressure on Charter to agree to Northwest's unreasonable demands, which is expressly preempted under Federal law. *See* 47 U.S.C § 544(a) ("Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with [Title VI of the Communications Act]."); *id.* § 544(f)(1) ("Any . . . franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in [Title VI].")

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John E. Fogarty', is written over the printed name and title.

John E. Fogarty
Vice President and Assistant Chief Counsel,
Regulatory
Charter Communications, Inc.
400 Atlantic Street
Stamford, CT 06901

ATTACHMENT A

Redwood Television Partners and Charter have been in good faith negotiations to carry our CBS and NBC programming on their cable system for some time. Unfortunately, the negotiations are at a standstill and Charter no longer has the rights to carry our programming. Both KVIQ and KIEM will be removed from the Charter cable systems as of 5pm on Saturday, February 3, 2018. We offer our sincere apologies to you for this disruption in your service.

×



**Delta
Mattress & Sofa
Outlet Store**



ATTACHMENT B

[REDACTED]

From: [REDACTED]@charter.com>
Sent: Friday, February 02, 2018 5:23 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: To discuss

[REDACTED]

For the record, we proposed an extension through the Super Bowl which you flat out rejected. Also, my proposed extension came with the offer to remain in my office actively engaged in negotiations through the entire weekend which you also rejected.

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com]
Sent: Friday, February 02, 2018 5:14 PM
To: [REDACTED]@charter.com>
Cc: [REDACTED]@brownrudnick.com>
Subject: Fwd: To discuss

[REDACTED]

For the record, Charter was offered an extension first through midnight tonight, then through 5 PM tomorrow, Saturday February 3rd, which you told me you choose to not accept.

Thanks

[REDACTED]

----- Forwarded message -----
From: [REDACTED]@charter.com>
Date: Fri, Feb 2, 2018 at 2:39 PM
Subject: RE: To discuss
To: [REDACTED]@northwestbroadcasting.com>

[REDACTED]

I just called you and you are evidently unavailable. You have our proposal and our offer to extend through the weekend so we can continue to dialog.

However, as you know, we are not permitted to carry your stations after 5pm/ET tonight (20 minutes from now) so I am hopeful you will provide me direction immediately.

Regards,

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com]
Sent: Friday, February 02, 2018 4:29 PM
To: [REDACTED]@charter.com>
Cc: [REDACTED]@brownrudnick.com>
Subject: To discuss

[REDACTED]

I appreciate you putting your offer in writing. I too am frustrated by the continued mischaracterizations you make about our conversations. Northwest has completed deals with many MPVD's over the last year and the rates we have recently offered you are in line with what our completed deals represent.

Northwest has not forced Charter to the brink of a blackout, Charter spent weeks refusing to negotiate and now an hour before an extension expires proposes a deal it knows won't get a deal completed, makes baseless allegations that we won't accept rates below our recent offer and represents Northwest's proposals as meaningless. This is no way to get a deal done. Charter is in control of its ability to purchase Northwest's programming and if they choose to let their contract expire that decision is Charter's alone.

I'm around if you what to speak.

[REDACTED]

--

[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED] [REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

--



Northwest Broadcasting, Inc.
 

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

[REDACTED]

From: [REDACTED]@charter.com>
Sent: Friday, February 02, 2018 4:20 PM
To: [REDACTED]
Subject: Request for Extension thru this Weekend

[REDACTED]

As requested in our prior telephone conversation, Charter is agreeing to extend our agreement on a status quo basis through 5pm/ET on Monday, February 5 to avoid customer disruption during the Super Bowl. As you know, under federal law, carriage of your stations beyond 5pm/ET tonight requires your express consent.

Please reply with your decision before 5pm/ET.

Regards,
[REDACTED]

Charter
COMMUNICATIONS

[REDACTED]

From: [REDACTED]
Sent: Friday, February 02, 2018 3:51 PM
To: [REDACTED]@northwestbroadcasting.com>
Cc: [REDACTED]@brownrudnick.com>; [REDACTED]@charter.com>
Subject: RE: Offer 2.2.18

[REDACTED]

Northwest's proposal below is significantly above the rates we pay for Big 4 Stations in any of the numerous markets where we operate across the country. As we have discussed numerous times before, Charter is committed to doing a deal with Northwest, but at market rates for Big 4 stations.

[REDACTED] I am frustrated. In early November, Northwest sent Charter a proposal containing rates that you have acknowledged are far higher than anyone else is paying. Charter countered with rates that are well in line with what we are paying others, and Northwest responded with the exact same Big 4 rates it had proposed previously. We have told you on a number of occasions where we need to be to get a deal done – e.g., rates in line with what we pay others for Big 4 content. But Northwest has refused to come to the table with a realistic offer. Having forced us to the brink of a blackout, that Northwest has come down slightly on the rates is meaningless when Northwest's proposal is still so far above what Charter is paying any other broadcaster.

You've told us orally that you won't accept rates below those in your email. Nonetheless, in the spirit of trying to get this deal done so that we can continue to provide our subscribers with Northwest's stations, we are providing the counter proposal below. Please let me know if this gets us there – I will call you shortly to follow up.

From: [REDACTED]@northwestbroadcasting.com]
Sent: Friday, February 02, 2018 2:40 PM
To: [REDACTED]@charter.com>
Cc: [REDACTED]@brownrudnick.com>
Subject: Offer 2.2.18

[REDACTED]
My job is getting deals done, not having them go off the rails. You asked me in our phone conversation a few minutes ago to put an offer in writing. This represents now multiple offers put in writing to you since you last put something in writing to me on November 20, 2017.

Assuming your company is sincere in not wanting to make a Charter corporate decision to deprive your customers of our programming, I anticipate that Charter will now make a genuine counter offer in writing.

This offer represents a dramatic move on the part of Northwest in Big 4 rates, in CW/MyNet Telemundo rates, and by following through on my telling you that we will drop the discussion about a third tier of pricing which others are paying us for.

I will look forward to your response in writing. And please let me know when you would like to reconvene by phone per our discussion.

Thanks

BIG FOUR AFFILIATES

(rates per subscriber per month per signal)

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: \$ [REDACTED]

2/1/20 to 1/31/21 \$ [REDACTED]

CW/MyNET/Telemundo

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: \$ [REDACTED]

2/1/20 to 1/31/21 \$ [REDACTED]

Other programming channels (digi-nets, etc.)

2/1/18 to 1/31/19: \$ [REDACTED]

2/1/19 to 1/31/20: [REDACTED]

2/1/20 to 1/31/21 [REDACTED]

--

[REDACTED]
Northwest Broadcasting, Inc.
[REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com>
Sent: Thursday, February 01, 2018 4:00 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: Extension to February 1, 2018 5 PM EST-Charter/Northwest

[REDACTED],
Please consider this email permission for Charter Communications to continue carriage of Northwest Broadcasting, Inc. stations for 24 hours beyond the end date and time of the agreement extension under which our companies are currently operating.

It is understood that rates and terms reached will be retroactive to the start date of any new agreement reached, prospectively to begin February 1, 2018. Such retroactivity is applicable to any period not affected by a disruption in service.

Please acknowledge receipt of this extension and the minimal terms expressed here.



On Thu, Feb 1, 2018 at 1:15 PM, [REDACTED]@charter.com> wrote:

[REDACTED],

I know that [REDACTED] and [REDACTED] just spoke. I understand that [REDACTED] offered a one-day extension. We are agreeable to that so please confirm and I will be back in touch once I process the discussion.

Best,

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com]
Sent: Wednesday, January 31, 2018 4:35 PM
To: [REDACTED]@charter.com>
Subject: Re: Extension to February 1, 2018 5 PM EST-Charter/Northwest

Agreed.

[REDACTED]

On Wed, Jan 31, 2018 at 2:33 PM, [REDACTED]@charter.com> wrote:

[REDACTED]

This is to acknowledge that we accept your extension on the condition that any retroactivity shall only apply if there is no interruption in Service.

Please confirm you are in agreement prior to 5pm/et today.

Thanks

[REDACTED]

Charter
COMMUNICATIONS

[REDACTED]

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com
Sent: Wednesday, January 31, 2018 3:43 PM
To: [REDACTED]@charter.com>
Cc: [REDACTED]@brownrudnick.com>
Subject: Extension to February 1, 2018 5 PM EST-Charter/Northwest

[REDACTED]

Please consider this email permission for Charter Communications to continue carriage of Northwest Broadcasting, Inc. stations for 24 hours beyond the end date and time of the agreement under which our companies are currently operating.

It is understood that rates and terms reached will be retroactive to the start date of any new agreement reached, prospectively to begin February 1, 2018.

Please acknowledge receipt of this extension and the minimal terms expressed here.

--

[REDACTED]

[REDACTED]

Northwest Broadcasting, Inc.

[REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

--

[REDACTED]
[REDACTED]
Northwest Broadcasting, Inc.
[REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

--

[REDACTED]
Northwest Broadcasting, Inc.
[REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

[REDACTED]

From: [REDACTED]@northwestbroadcasting.com>
Sent: Wednesday, January 31, 2018 11:50 AM
To: [REDACTED]
Subject: Re: Follow Up: Charter/Northwest

[REDACTED]
We are interested in a productive discussion.

As far as I know, the only proposal discussed a couple of weeks ago was your restating that Charter's last offer from November 20, 2017. Based on our last conversation, I understood you to say that you were done negotiating. If there is something I missed in that discussion on January 17th, please share that with me. No reason to have a verbal sparring match over what was said or not said, however.

Other than 12:30-1 PM MST today, I am open to visiting with you by phone. Let's talk-I am available immediately.

[REDACTED]

On Wed, Jan 31, 2018 at 9:02 AM, [REDACTED]@charter.com> wrote:

[REDACTED]

I haven't heard from you since our last conversation on January 17 when I had made you a proposal that you were going to process with your CEO, [REDACTED].

As you are aware, our agreement expires at 5pm/EST today. In order to avoid any unnecessary disruption for our customers and your viewers, Charter is willing to agree to a day-to-day extension on status quo terms to give us ample time to continue to discuss renewal terms that work for both parties. As you know, under federal law, Charter may not continue carriage of your stations beyond 5pm EST this evening without your express consent, so please let me know if you are granting this temporary extension.

[REDACTED] I remain committed to continuing to engage in productive discussions with you. Given that you made clear on our last call that your inflated offer does not reflect the current "market" for retransmission consent fees by pointing out the fact that your proposed rates are considerably higher than the rates any other distributor has agreed to pay Northwest, we are hopeful you will reconsider your current approach that aims to

establish a deal with Charter that resets the marketplace rate to unprecedented levels, and instead enter into a fair deal with us that is in line with the recent deals we reached with 100+ other stations across the 41 states we serve.

Regards,

[REDACTED]

Charter
COMMUNICATIONS

[REDACTED]

[REDACTED]

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

--

[REDACTED]
[REDACTED]
Northwest Broadcasting, Inc.
[REDACTED]

The information transmitted in this message is intended only for the person or entity to which it is addressed and may contain proprietary, confidential and/or privileged material. You are hereby notified that any retransmission, dissemination, distribution, reproduction or other use of the contents of this message is prohibited. This includes, but is not limited to, publicly posting the contents of this message to a social media platform. If you received this message in error, please contact the sender and delete the message and any attachments without printing, copying or further disseminating it.

ATTACHMENT C

From: Schott, Laurence F

Sent: Saturday, February 03, 2018 4:19 AM

To: 'Wilkinson, Greg - City Administrator' <Greg.Wilkinson@yumaaz.gov>

Cc: White, Daniel R - Assistant City Attorney <Daniel.White@yumaaz.gov>; MYR - Mayor and Council <MYR-MayorandCouncilStaff@yumaaz.gov>; Abbott, Paul D <Paul.Abbott@charter.com>

Subject: RE: Northwest Broadcasting Blacked Out Stations

Greg,

I can call you later this morning to discuss the blackout situation. I have an update call at 10:00 am and will send you an email with any new information to see you would like to talk over the phone.

As for a response to the local origination channel, I dropped a letter in the U.S. Mail on Friday, January 26. I will send you an electronic copy in a new email in a few minutes.

Buz

From: Wilkinson, Greg - City Administrator [<mailto:Greg.Wilkinson@yumaaz.gov>]

Sent: Friday, February 02, 2018 7:48 PM

To: Schott, Laurence F <Laurence.Schott@charter.com>

Cc: White, Daniel R - Assistant City Attorney <Daniel.White@yumaaz.gov>; MYR - Mayor and Council <MYR-MayorandCouncilStaff@yumaaz.gov>; Abbott, Paul D <Paul.Abbott@charter.com>

Subject: Re: Northwest Broadcasting Blacked Out Stations

Buz, We did not get any voice mails on this or any other subject. Nor did you ever get back to Dan on the discontinuance of the local origination channel.

Dan will reach out on Monday to set up a meeting with a Charter corporate rep.

R/Greg

On Feb 2, 2018, at 4:51 PM, Schott, Laurence F <Laurence.Schott@charter.com> wrote:

Greg,

I left you two voicemails earlier this week to discuss the situation. We have been negotiating with Northwest Broadcasting up until 5:00 pm Eastern and were unable to come to a resolution. I informed you as soon as I was aware that the black out. In addition, the attachment and website included in the email provides opportunities for Yuma viewers to watch the Super Bowl.

Charter has been working hard to come to agreement with Northwest Broadcasting and will continue to negotiate in good faith.

Buz

From: Wilkinson, Greg - City Administrator [<mailto:Greg.Wilkinson@yumaaz.gov>]

Sent: Friday, February 02, 2018 3:26 PM

To: Schott, Laurence F <Laurence.Schott@charter.com>

Cc: White, Daniel R - Assistant City Attorney <Daniel.White@yumaaz.gov>; MYR - Mayor and Council <MYR-MayorandCouncilStaff@yumaaz.gov>

Subject: Re: Northwest Broadcasting Blacked Out Stations

Buz, Timeliness of this email is totally unacceptable. An email 90 minutes before you blackout our local channels is at a new level of incompetence, not what we would expect from Charter or a cable company that supports our community. As you know this is Super Bowl Sunday and the Olympics start next week which will now, not be available to thousands of viewers in the Yuma area.

As you already know Charter is in violation of our franchise agreement and has been put on notice while incurring daily fines.

We are less than pleased at the lack of response, missed due dates when you and Charter indicated to us that you were going to provide us information or feedback.

I have asked Dan White to set up a meeting with someone in upper management with Charter to discuss performance issues with respect to our Franchise Agreement and the future viability of the Franchise agreement in Yuma with what has been going on over the last couple of months.

R/Greg

On Feb 2, 2018, at 3:31 PM, Schott, Laurence F <Laurence.Schott@charter.com> wrote:

Greg,

We wanted to let you know that, at 5:00 p.m. Eastern today, Northwest Broadcasting pulled their broadcast signals from Charter Communications, affecting subscribers in Yuma, Arizona. Charter was hoping to reach a fair deal, and we are disappointed that Northwest refused to come off their demand for a rate that is higher than what we have ever paid any other broadcaster.

The following stations that Northwest Broadcasting has blacked out in your area are KWST – CBS and KYMA – NBC.

We hope that this issue will be resolved quickly. In the meantime, we are doing all that we can to minimize the impact on customers including communicating to them about alternative means to access programming that they will be unable to view on Northwest channels, especially the Super Bowl (February 4) and the Olympics (February 9-25) that are both coming up on NBC. Attached is a one-page description of options to assist you in answering questions from members of your community.

Attached is a one-page description of options to assist you in answering questions from your constituents. More information about this Northwest initiated blackout can be found at NorthwestFairDeal.com

I am sending emails to affected officials and will be available to discuss additional details if you would like.

Buz

<image001.png>

Buz Schott | Senior Director State Government Affairs

10450 Pacific Center Court, San Diego, CA 92121 | O: 858-309-8387 | C: 619-385-6854

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

<Charter - Northwest Broadcasting Handout 1.2.18.pdf>

The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

DECLARATION OF ROBERT McLAURIN

DECLARATION OF ROBERT MCLAURIN

1. I serve as the Town Manager for the Town of Jackson, Wyoming ("Jackson"). I affirm that the following is a true and accurate representation of the events surrounding the removal of KPVI, the local affiliate of NBC, from the Charter Communications, Inc. ("Charter") cable system in Jackson. In 2015, Jackson granted a cable franchise to Bresnan Communications, LLC, a subsidiary of Charter Communications Inc. That franchise agreement remains in effect.

2. On Friday, February 2, 2018 KPVI was removed from Charter's cable system and blacked out without notice. Charter customers within Jackson were subsequently shown a message in lieu of KPVI programming, indicating that NBC programming was not available due to a negotiation problem with a content provider (Northwest Broadcasting, Inc.) and that customers could access all NBC content through the internet. KPVI has remained blacked out since that day, depriving many of the residents of the Town of Jackson of the Super Bowl, the entire Winter Olympic Games, and all additional KPVI programming every day since February 2, 2018.

3. Charter stopped carrying KPVI in Jackson and Teton County, WY without providing notice to its subscribers or to Town of Jackson. While the Town received citizen complaints beginning on Monday February 5, 2018, to my knowledge no person in Jackson's government ever received any communication or correspondence from Charter. The Town Attorney ultimately called Erik Rasmussen, the Sr. Mgr. Government Affairs in Cheyenne, Wyoming, who eleven (11) days after the blackout sent me a letter on February 13, 2018, "as a courtesy" to let me know of the blackout. **See Attached Exhibit A.** Mr. Rasmussen's email was the first correspondence I received, and to my knowledge that any person in the Jackson

government had received, from Charter indicating that the KPVI was the station blacked out from Charter's cable system.

4. Charter's removal of the channels created a lot of frustration and anger among the Jackson residents, especially because the residents who subscribe to Charter's cable service were unable to watch the Super Bowl and Winter Olympics on their televisions. **See Attached Exhibit B.** I was a Charter cable service subscriber at that time and was unable to watch any programming on KPVI, including the Super Bowl and Winter Olympics on my television. Although Charter provided instructions for its subscribers to live stream NBC, those instructions were misleading. I received reports from other Jackson residents that they were unable to stream any live events on NBC, such as the Olympics on the Internet as Charter had indicated. **See Attached Exhibit B.**

5. On February 16, 2018, Mary Roehr, Charter Communication's Director of Government Affairs sent a follow-up letter to the Town Attorney. **See Attached Exhibit C.** Thereafter, Mary Roehr attended a Jackson Town Council workshop on February 20, 2018 in which the Charter situation was discussed. I attended that meeting, during which the following exchange occurred:

Ms. Roehr was asked how "it was not possible for Charter to provide advance notice to subscribers," a quote from Ms. Roehr's February 16, 2018 letter to the Town of Jackson, of the impending blackout of KPVI when it was possible for Charter "to register the domain name NorthwestFariDeal.com blaming the other party for the interruption in service more than two weeks before the interruption in service" Ms. Roehr replied that:

"Yeah, I'd say there's probably two parts to that. The first one is that in these negotiations sometimes come down to the months, the week, the day, or even indeed the hour before agreements are reached. I make mention of that with respect to advance notice. We have asked for and we have received ... day to day, 24-hour extensions of our contract. So, in that negotiation process in terms of advance notice that's why I would say that advance notice could

not have been, could not have been delivered. With respect to the domain name, we certainly have been aware of, and I think the letter states that, Northwest Broadcasting's previous disputes and it was prudent for us, in the interest of our customers, in the event that we were not able to reach an agreement, to prepare for methods, ways in which we could communicate should KPVI chose to remove its programming, its authorization to carry its programming. So, that's why that was done weeks in advance, given the track record of Northwest Broadcasting.

See Exhibit C.

6. On March 6, 2018, the Town Attorney on behalf of Jackson sent Charter a notice of violation of Charter's franchise agreement and of the FCC regulations. **See attached Exhibit D.**

The Jackson notice stated that Charter violated the franchise agreement and/or Title 47 of the Code of Federal Regulations by failing to provide 1) notice to Jackson and to Charter subscribers regarding the service change and 2) false and/or misleading information provided by Charter to Jackson and its subscribers. It also contained informational requests pursuant to the Franchise Agreement concerning compliance with Ordinance 1087, and records showing the company's compliance (or non-compliance) with each of the FCC's customer service standards for each quarter of 2017. **See attached Exhibit D.**

7. To date the Town has not received a response from Charter to its March 6 letter.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated March 15, 2018

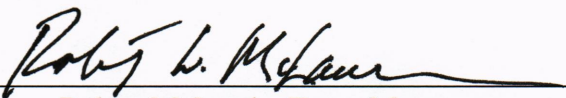

Robert McLaurin, Town Manager
Town of Jackson, Wyoming

EXHIBIT A TO DECLARATION OF ROBERT McLAURIN



February 13, 2018

Town of Jackson
Attn: Bob McLaurin, Town Manager
PO Box 1687
Jackson, WY 83001

Dear Bob:

At 5:00 p.m. on February 2, 2018, Northwest Broadcasting pulled their broadcast signals from Charter Communications, affecting subscribers in the City of Jackson. We promptly notified our subscribers in Jackson. As a courtesy, we also wanted to let you know of the blackout. Charter was hoping to reach a fair deal, and we are disappointed that Northwest refused to come off their demand for a rate that is higher than what we have ever paid any other broadcaster. The following is the station that Northwest blacked out in your area:

- Jackson, WY: KPVI (NBC)

We hope that this issue will be resolved quickly. In the meantime, we are doing all that we can to minimize the impact on customers including communicating to them about alternative means to access programming that they will be unable to view on Northwest channels. Attached is a one-page description of options to assist you in answering questions from members of your community. More information about this Northwest initiated blackout can be found at NorthwestFairDeal.com

If you have any questions, please don't hesitate to contact me at 307-331-3448 or by email at Erik.Rasmussen@charter.com

Sincerely,

/s/ 

Erik Rasmussen
Sr. Mgr. Government Affairs
Erik.Rasmussen@charter.com
611 E. Carlson Street, Ste. 103
Cheyenne, WY 82009

The Situation:

Most of the time our customers never hear about contract negotiations between cable providers and broadcasters. On occasion however, an agreement can't be reached immediately. We are disappointed that, despite our best efforts, Northwest Broadcasting is demanding that we pay them significantly more than we pay any other broadcast station. We hope this issue will be resolved quickly. In the meantime, Charter Spectrum is doing all that we can to minimize the impact on customers including communicating to them about alternative means to access programming that they will be unable to view on Northwest Channels.

Broadcast Channels



Alternative Programming Sources:

- Full episodes of NBC programming are available at NBC.com
- Fox programming is available at Fox.com
- Me TV programming is available at MeTV.com
- Broadcast channels are available over the air using an antenna

Must-Have NBC Programming



Super Bowl:

- Free streaming of the Super Bowl will be available on NBCSports.com and the NBC Sports App as well as the NFL Mobile App



The Olympics:

- Live streaming of the Olympics will be available to subscribers of USA Network on the NBC Sports App
 - Customers who don't subscribe to USA Network will be provided a "free preview" for 30 days in Northwest's NBC markets enabling them to access Olympic programming on the USA Network channel or through the Spectrum TV App

EXHIBIT B TO DECLARATION OF ROBERT McLAURIN

From: Joan Anzelmo
To: [Jim Stanford](#); [Don Frank](#); [Hailey Morton Levinson](#); [Bob Lenz](#)
Subject: Thank you for your hearing re Spectrum. listening
Date: Tuesday, February 20, 2018 3:27:36 PM

Spectrum is lying,their messages are still on our TVs with incorrect info about watching on antennae and via app

Thanks again.
Joan Anzelmo

From: Joan Anzelmo
To: [Jim Stanford](#)
Subject: Charter/Spectrum lying to us in Jackson
Date: Sunday, February 11, 2018 4:17:51 PM

Hi Jim,
Hope you are well.

I know you and the Council have battled with Charter/Spectrum previously. Seems now is the time to band with the other 11 communities who have had their NBC or other network affiliates owned by Northwest cut off with no notice, days before Super Bowl and the Olympics.

According to this story in OR, Charter/Spectrum pre-meditated cutting off the NBC channels. They bought their propaganda website FairDeal two weeks prior!
<http://www.mailtribune.com/news/20180209/squabble-leaves-tv-viewers-in-dark>

Letter from Northwest CEO, worthwhile read and verifies Spectrum was required to give 30 day notice which they did not and also customers can insist on a refund.
<http://www.fox26medford.com/bring-kmvu-back/>

Another thing I wanted to pass along, the message on my TV from Spectrum incorrectly tells subscribers they can watch KPVI (NBC) free with an antennae- not true in this area! And that people can watch the Olympics online or via the NBC Sports App. Again, not true!!!

And get this, I tried to use the NBC online web platform and also the NBC Sports app. to view. Both require you to identify your TV provider and then sign in with your credentials. I did this and the online message stated I was not subscribed to NBC and was denied access. And I presume Charter/Spectrum went to some trouble to make sure all of us with Northwest Broadcasting NBC affiliates could not view online! Really heinous.

The Northwest CEO heads to DC tomorrow to raise this with Members of Congress.

Chartet/Spectrum has been lying to all of us. Hope the Town takes this on as appropriate and as other towns are doing.

Thank you.

Joan Anzelmo

From: Frank Fanning
To: [Hailey Morton Levinson](#)
Subject: Spectrum
Date: Monday, February 5, 2018 7:42:50 PM

Hello Hailey

In the wake of the outrageous and indignant high handed actions of Spectrum in violating their contracts with myself and your other constituents, please advise actions which you may be taking or other appropriate to petitioning for the revocation of Spectrum's broadcasting rights in our area.

Many thanks

Frank Fanning
constituent

Frank Fanning


From: [REDACTED]
To: [Pete Muldoon](#)
Cc: [Town Council](#); [REDACTED]
Subject: Spectrum and Northwest Broadcasting Negotiations
Date: Tuesday, February 13, 2018 9:07:50 AM

Pete and

Can you comment on the ABOMINATION of this situation?

We would like to see what the town is communicating to Spectrum (see below)

Thank you

Lance

----- Forwarded message -----

From: **Brian Brady**; [REDACTED]
Date: Sun, Feb 11, 2018 at 2:19 PM
Subject: RE: Spectrum and Northwest Broadcasting Negotiations
To: Lori Z Roux; [REDACTED]

this is in response to my previous email that you can view below...

Lori, that is the best analogy I've heard and frankly I agree with it. Northwest didn't demand a 75% increase which they've claimed. In fact we didn't demand anything, this was a negotiation until they refused to negotiate and pulled the stations down. They have said things about Northwest, the only thing that's true is that we have been in a number of tough retrans negotiations over the years, we never denied that. However as a small company Northwest has done deals with 20 plus large video providers over the last year. Northwest offered Spectrum the same terms and rates as all of those deals. What makes Spectrum different? They stopped negotiating and pulled the stations down then tried to convince folks like yourself that Northwest did it. That is just not true. We extended another company we were working with 8 times and completed a deal on the same day Spectrum pulled the stations down. We extended another one to the same day and time we offered Spectrum and extended them a third time to avoid disrupting their subscribers. If we did that for others why would we not do it for Spectrum? The fact is we did and they refused it. Doesn't it seem odd to you that if Spectrum wanted to get this resolved as their customer service center says, then they would be communicating with us and we would collectively be working toward a resolution? We have not heard from them since they pulled the stations down. I'm sorry you are in the middle of this, it is the last thing I want. It is difficult to get a deal done when the other side refuses to negotiate. Brian

Below is a recent post on this issue:

First let me apologize again to all the Spectrum customers who have been affected by Spectrum's abrupt termination of any negotiations with Northwest. This should have remained a private issue between two companies without Spectrum using their unsuspecting subscribers as pawns to gain leverage on Northwest. For the record when Northwest offered Spectrum a second extension on February 2nd, their response was, "We are taking your stations down in the next ten minutes" and they hung up the phone and we have not heard from them since.

While we wait, many of you have missed the Super Bowl, News and other entertainment programming. Their call centers tell people that we are in current negotiations. This is another fabrication in an effort to keep you from cancelling or refusing to give you a refund. Now, their unbridled corporate arrogance, that same arrogance that started all of this, is about to deny many of you the opportunity to watch the Winter Olympics, Daytona 500 and March Madness after that.

Their strategy is to continue calling Northwest names and posting additional stories about our past retrans negotiations to their "northwestfairdeal" web site in an effort to make you think that somehow Northwest is the "bad guy". Truth is they created this disruption because they just don't care about you. We found out yesterday that they purchased the domain name for the "northwestfairdeal" web site on January 18th which happened to be the same time they told Northwest they would not counter Northwest's proposal to them and then disappeared for two weeks. This was a set up and Spectrum's subscribers were just collateral damage.

While many may believe their propaganda, a large majority of you don't. The way they are treating Northwest is the same way they are treating you as customers. Because of their size they don't care about their subscribers or business partners. They are the bully on the block who thinks their subscribers are nothing more than an ATM machine from which they can extract money at a moment's notice or with no notice at all, as I'm learning.

When Tom Rutledge made what appears to be a premeditated decision to take down Northwest's stations he knew or should have known that he was in violation of his own Annual Customer Notification Policy which is filed at the Federal Communications Commission, a copy which is on Spectrum's web site <https://www.spectrum.com/policies/annual-notice.html>. In the section titled, Programming, it states, Spectrum will provides notice to its customers at least thirty (30) days in advance of the deletion of any programming service, channel assignment changes or rate increases. Clearly that's not the case here.

In spite of what Spectrum's customer service people are telling you, you have a right to a refund. While this is not going to bring back the programming you have missed or will want to watch this weekend or beyond you should not be paying for something Spectrum is not delivering to you. Each and every one of you should demand that you get a refund for every day that you are not getting the programming you are paying for.

The City of Yuma, Arizona has put Spectrum on notice that it is seeking damages for every day that Spectrum blacks out local channels and is demanding that Spectrum credits Yuma subscribers for dropping the channels without notice. If you don't

get the full refund you deserve, ask the Mayor's office in your town for help, as the Spectrum subscribers did in Yuma. If that doesn't work send an email to the FCC and your Congressman. I am heading to Washington, DC next week armed with your stories of how Spectrum treats you. There are 450,000 homes that are affected. If enough of you speak up, they will listen.

In the meantime continue to email or call Tom Rutledge and express your dissatisfaction with how he is treating you. It is highly unlikely he will take the time to respond but maybe he'll have one of "his people" get back to you. I am sorry that Tom has put you all in the middle of a negotiation that should have remained private and without disruption to you.

tom.rutledge@chartercom.com [203-905-7999](tel:203-905-7999)

Brian

Brian Brady

President and CEO

Northwest Broadcasting, Inc

From: Lori Z Roux [mailto: [REDACTED]]

Sent: Sunday, February 11, 2018 12:07 PM

To: Tom.Rutledge@charter.com; Thean, Vansothy <Vansothy.Thean@charter.com>; Carlos.Vazquez@charter.com; Derek.Hill@charter.com; Brian Brady

[REDACTED] on Rand <rand@northwestbroadcasting.com>

Cc: editor@jhnewsandguide.com

Subject: Spectrum and Northwest Broadcasting Negotiations

Gentleman,

It appears that there has been no headway in the negotiations between Spectrum and Northwest Broadcasting.

Amazing, seeing as South Korea and North Korea have been able to coordinate their Olympic representatives in to ONE team competing for the Korean Peninsula.

Sincerely,

Lori Roux

Wilson, WY

This letter has been copied to the editor of the Jackson Hole News and Guide

Lance Cygielman



Virus-free. www.avast.com

From: Steve Walsh
To: [Bob Lenz](#)
Subject: Spectrum NBC issue
Date: Sunday, February 18, 2018 7:02:45 PM

Dear Bob

I understand that the town council will be discussing the issue between Spectrum and Northwest regarding NBC. My personal feeling is that instead of taking sides since in all probability they are both at fault in this matter we should look for a better solution. I am extremely disappointed that I am missing the olympics and probably some of my favorite shows after the olympics are over.

I feel that the residents of Teton county would be better served if the council could explore asking the FCC if it could allow Spectrum to drop NBC in Idaho for an NBC affiliate in Wyoming. This would be a great opportunity for us to finally have access to Wyoming news instead of just Idaho. I understand that Spectrum could make this change quickly if the FCC allowed it.

Steve Walsh
[REDACTED]
[REDACTED]

Sent from my iPad

EXHIBIT C TO DECLARATION OF ROBERT McLAURIN



Mary Roehr

Director, Government Affairs

February 16, 2018

Via Federal Express and

Email acohendavis@ci.jackson.wy.us

Ms. Audrey Cohen-Davis
Town Attorney
Town of Jackson
150 East Pearl Avenue
Jackson WY 83001

Dear Audrey:

Thank you for reaching out to Charter concerning Northwest Broadcasting, Inc.'s ("Northwest") decision to pull the authorization for the signal of KPVI (NBC) from the Jackson channel lineup. Charter understands your frustration and regrets the impact of Northwest's decision. We hope to resolve the matter quickly, so our customers can again receive KPVI programming at a cost that is reasonable.

I will attend the town's Tuesday, February 20, workshop and welcome the opportunity to discuss the situation further. In the meantime, the company would like to correct some misinformation coming from Northwest Broadcasting (the parent company of KPVI) and its representatives. Charter did not pull the KPVI signal as their leadership has led you to believe. At 5:00 p.m. Eastern Standard Time ("EST") on Friday, February 2, 2018, two days after the agreement allowing Charter to carry Northwest's broadcast signals was originally set to expire, Northwest pulled the authorization for the broadcast signals from all of its stations from Charter's lineups, including KPVI. Charter was hoping to reach a fair deal in advance of any interruption in service, and we are disappointed that Northwest refused to come off its demand for a rate that is higher than what we have ever paid any other broadcaster.

The parties originally commenced negotiations last October (for the contract that was set to expire on January 31, 2018), but Northwest's initial proposal was without precedent: it would have increased carriage fees substantially over current rates, to a per subscriber level more than double the rate Charter pays any other broadcaster in the entire country. At the time Northwest pulled its authorization, it wanted an 80% increase in the rate we pay for its programming, despite a more than 13% decline in its stations' ratings over the last five years. While Charter was prepared for a reasonable increase in carriage fees, it could not and would not agree to such an unwarranted increase - an increase that would substantially and unfairly impact our customers.

Requests for exorbitant increases in fees and an unwillingness to reach a reasonable resolution of these issues has become a pattern with Northwest in programming carriage negotiations. In the last several years alone, Northwest's tactics have led to blackouts with video distributors around the country including with Verizon FiOS and Cable One in 2017, and both DirecTV and Dish Network a few years before. On the other hand, Charter has negotiated fairly and successfully for carriage with hundreds of

Ms. Audrey Cohen-Davis
February 16, 2018
Page 2

broadcast stations and has not had a blackout with even one of any other broadcaster's top four (ABC, NBC, CBS or FOX) affiliated stations ever.

On Friday, February 2, after the parties agreed to two 24-hour extensions, Charter made an offer that would have increased the carriage fees over its prior proposals, and asked for an extension through Sunday, February 4, so that customers would be able to watch the Super Bowl, with a promise to work through the entire weekend to attempt to conclude a long-term deal. Northwest rejected this offer, countered with a proposal that was still nearly double existing rates, and offered only a seven-hour extension (to midnight of February 2nd). Northwest refused Charter's request, and negotiations under the terms of the agreement came to an end.

Under federal law, Charter cannot retransmit broadcast programming without explicit consent. Northwest is well aware of the law and is misleading you by saying that Charter pulled the signal. In fact, its own message to customers acknowledged that Charter had no right to continue carrying the programming. Any assertion by Northwest to the contrary is an intentional falsehood; we asked directly and unambiguously for an extension beyond the Super Bowl and they would not afford that convenience to our customers.

Given the ongoing negotiations, it was not possible for Charter to provide advance notice to subscribers. All along we hoped for a mutually beneficial resolution and with a series of one-day extensions, advance notice to our customers would have only created confusion. Once Northwest discontinued its authorization for us to carry KPVI, Charter immediately provided notice to its affected subscribers, making on-air announcements within minutes, sending emails, and creating a website where customers could get additional information about the blackout. Charter has also sent a courtesy notice to the Town concerning this issue. Under these circumstances, Charter has fully complied with the applicable notice provisions in its franchise in Jackson, and the related rules of the Federal Communications Commission do not require advance notice when the circumstances are outside the cable operators' control.

Although it now alleges that it was Charter's decision to discontinue carrying its signals, Northwest itself posted a message shortly after talks broke down acknowledging that negotiations had been proceeding "in good faith," but that they had reached "a standstill" and that consequently (as mentioned earlier) "Charter no longer has the rights to carry our programming." A representative example of Northwest's messaging, which also appeared on KPVI, is attached.

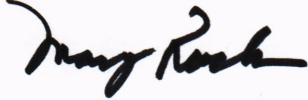
We continue to work toward a resolution of the dispute. In the meantime, we are doing all that we can to minimize the impact on customers. More information about this Northwest initiated blackout can be found at NorthwestFairDeal.com. We are sorry for the disruption that Northwest has caused and will

Ms. Audrey Cohen-Davis
February 16, 2018
Page 3

continue to work toward reaching a fair agreement that is in the best interests of our customers. We value the partnership we have forged with Jackson, appreciate the rights granted by our franchise to serve the town, and look forward to continuing to provide the best cable programming, entertainment and communications services to our customers and your constituents.

Please let me know if you have any additional questions. Thank you.

Sincerely,



Mary Roehr
Director, Government Affairs

cc: Mr. Bob McLaurin, Town Manager – **Via Email** info@ci.jackson.wy.us

Redwood Television Partners and Charter have been in good faith negotiations to carry our CBS and NBC programming on their cable system for some time. Unfortunately, the negotiations are at a standstill and Charter no longer has the rights to carry our programming. Both KVIQ and KIEM will be removed from the Charter cable systems as of 5pm on Saturday, February 3, 2018. We offer our sincere apologies to you for this disruption in your service.

×



**Delta
Mattress & Sofa
Outlet Store**



EXHIBIT D TO DECLARATION OF ROBERT McLAURIN



OFFICE OF THE TOWN ATTORNEY

March 6, 2018

Bresnan Communications, LLC
P.O. Box 2650
Jackson, Wyoming 83001

Charter Communications
Attn: Vice President of Government Affairs
12405 Powerscourt Drive
St. Louis, Missouri 63131

Erik Rasmussen
Sr. Mgr. Government Relations
611 E. Carlson St., Suite 103
Cheyenne, Wyoming 82009

Mary Roehr
Director Government Affairs, Colorado, Montana, Wyoming
951 West Custer Avenue
Helena, Montana 59601

Re: Service Interruption KPVI Jackson, Wyoming

To Whom It May Concern,

Bresnan Communications, LLC provides cable and internet services in the Town of Jackson, Wyoming, branded locally as "Spectrum" or "Charter" (hereinafter "Charter"). Charter provides cable services within the Town of Jackson pursuant to a Franchise Agreement between Charter and the Town of Jackson, Wyoming, into which the parties entered on April 20, 2015 and which remains in effect.¹

At 5:00 pm MST on February 2, 2018 KPVI (the NBC affiliate station in Jackson, Wyoming) ceased all programming and blacked out without notice. Charter customers within the Town of Jackson were subsequently shown a message on KPVI indicating the NBC programming was not available due to a negotiation problem with a content provider (Northwest Broadcasting, Inc.) and that customers could access all NBC content through the internet. KPVI has remained

¹ See Attachment A.

blackout since that day, depriving many of the residents of the Town of Jackson of the Super Bowl (a once-a-year, foremost sporting event), the entire Winter Olympic Games (a once-in-four-years, unparalleled global sporting event), and all NBC programming in addition to these two elite events every day since February 2, 2018.

The Town of Jackson is therefore providing notice, in accordance with Section 7.1 of the Franchise Agreement, to Charter of violations of the Franchise Agreement and violations of Title 47 of the Code of Federal Regulations. The relevant provisions of the federal regulations are incorporated into the Franchise Agreement by virtue of Section 3.8(1) and violations of the Franchise Agreement may be a breach of the contract, and/or may be enforceable by the Town via the Jackson Municipal Code as the franchise was adopted by ordinance under Wyoming law. The facts and circumstances of these violations are set forth more specifically below. Furthermore, the Town is providing notice to Charter of informational requests it is making pursuant to various provisions of said Franchise Agreement, which are also set forth more specifically below.

A: Charter Communications, LLC Violations of the Franchise Agreement and/or Title 47 of the Code of Federal Regulations

I: Notice to Town of Jackson Subscribers Regarding Service Change

On February 2, 2018 KPVI in Jackson, Wyoming was blacked out without notice, whether in writing or otherwise, to Charter subscribers. Mary Roehr, Charter Communication's Director of Government Affairs confirmed at the February 20, 2018 Jackson Town Council Workshop that it is "not in dispute" that KPVI was blacked out and has remained so since February 2, 2018.²

At the February 20, 2018 Jackson Town Council Workshop Ms. Roehr was asked how "it was not possible for Charter to provide advance notice to subscribers," a quote from Ms. Roehr's February 16, 2018 letter to the Town of Jackson,³ of the impending blackout of KPVI when it was possible for Charter "to register the domain name NorthwestFariDeal.com blaming the other party for the interruption in service more than two weeks before the interruption in service" Ms. Roehr replied that

Yeah, I'd say there's probably two parts to that. The first one is that in these negotiations sometimes come down to the months, the week, the day, or even indeed the hour before agreements are reached. I make mention of that with respect to advance notice. We have asked for and we have received . . . day to day, 24-hour extensions of our contract. So, in that negotiation process in terms of advance notice that's why I would say that advance notice could not have been, could not have been delivered. With respect to the domain name, we certainly have been aware of, and I think the letter states that, Northwest Broadcasting's previous disputes and it was prudent for us, in the interest of our customers, in the event that we were not able to reach an agreement, to prepare for methods, ways in which we could

² See Town of Jackson Town Council Workshop Video, <http://jacksonwy.swagit.com/play/02202018-822>.

³ See Attachment B.

communicate should KPVI chose to remove its programming, its authorization to carry its programming. So, that's why that was done weeks in advance, given the track record of Northwest Broadcasting.

On February 26, 2018 the Town of Jackson received a sworn affidavit from Brian Brady, the Chief Executive Officer of Northwest Broadcasting, Inc., attesting to the circumstances surrounding the blackout of KPVI in Jackson. He verified that Northwest Broadcasting, Inc. sought to negotiate with Charter eight months prior to the January 31, 2018 contract expiration date. Two weeks prior to that expiration date Charter provided an oral contract proposal and only reduced the proposal to writing two days *after* the contract expired, at which time Northwest Broadcasting, Inc. had already granted two 24-hour extensions. Thereafter, he attested that

Despite the expiration of the agreement and the lack of a written proposal from Charter, Northwest agreed to multiple 24 hour extensions through February 2, 2018 in the hope of reaching an agreement with Charter. As mentioned above, Charter finally submitted a written proposal at 4:00pm Eastern time on February 2, 2018 at which point Northwest offered an extension through February 3, 2018, to allow it time to review and respond to Charter's written proposal. Charter requested an extension to February 5, 2018 so its customers could watch the Super Bowl, but that request also stated that on February 5, 2018, Charter would pull KPVI from its cable system. Northwest denied Charter's request, and again offered to extend to February 3, 2018 to allow negotiations to continue. Northwest told Charter if an extension past February 3, 2018 was necessary, Northwest would be happy to discuss it. At approximately 4:50p.m. Eastern time, Charter refused Northwest's offer to extend the Contract to February 3, 2018, and told Northwest that Charter was removing KPVI (and all other channels covered by the Contract) at 5:00p.m. Eastern time. Charter removed KPVI from its cable system at 5:00p.m. Eastern time.

Not only did Charter not ask for a 30-day extension to the Contract at any point in the negotiations, it did not ask for any extensions prior to the original expiration date - January 31, 2018 - of the Contract. At the time Charter removed KPVI from its cable system, Northwest was willing to grant Charter further extensions to carry the channels. Northwest never had any intent of denying Charter from carrying any of its channels, including KPVI, on Charter's cable system.⁴

47 C.F.R. § 76.1603(b) states that “[c]ustomers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of [programming] changes if the change is within the control of the cable operator.” Section 3.8(4)(1)(b) of the Franchise Agreement between Charter and the Town of Jackson requires “[s]ubscribers [] be notified of any changes in rates,

⁴ See Attachment C.

programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee.”

Charter violated both the federal law and the Franchise Agreement provisions when KPVI was blacked out throughout the Town of Jackson on February 2, 2018 without notice. As stated by Ms. Roehr’s in both her February 16, 2018 letter and her public comments at the Town Council Workshop, and confirmed by Mr. Brady in his affidavit, an extension of KPVI programming was offered by Northwest Broadcasting. It was within Charter’s control to accept that offer. Furthermore, Mr. Brady’s sworn affidavit confirms both that Charter never sought a thirty-day extension of the contract and that Charter, not Northwest Broadcasting, blacked out KPVI programming. Moreover, if one assumes that Charter believed it could not obtain an extension (and so did not seek one), its failure to provide notice thirty (30) days in advance of the *scheduled* expiration date was Charter’s own choice, and one for which it was responsible. In letters to the Town of Jackson, Charter suggested that Northwest Broadcasting was seeking unreasonable compensation, and that this was typical of Northwest Broadcasting. If that is the case, one would have expected Charter to give the required notice *in advance of the scheduled contract expiration*. Ms. Roehr’s confirmation that Charter was aware of the potential loss of KPVI programming and that Charter premeditatively prepared for that eventuality more than two (2) weeks prior to the blackout demonstrates Charter knowingly violated the notice provisions at issue. In addition, Charter faced similar notice issues in connection with its April 2017 negotiations with Fox Networks Group, indicating Charter was aware of the notice requirements of federal law and could have provided notice in conformance with them even if one assumes that it could not have obtained further extensions.

II: False and/or Misinformation Provided by Charter to Town of Jackson Subscribers

On February 20, 2018 at a public Town Council Workshop the Jackson Town Council noted for Ms. Roehr that “when [Charter] Communications, LLC made the decision to pull the channel from subscribers the spokespeople stated through the media and on messages on the screens that citizens of Jackson could still watch the Olympic programming for instance with an antenna or by going online and streaming and both of those turned out to be false,” and followed up by asking why that was suggested to subscribers. Ms. Roehr replied that

Yeah. I think that in retrospect we could have, you know, delivered better information on that score. With respect other means by which people could obtain that programming . . . I don’t notice could have been provided if there are individual complaints about for instance NBCsports.com. I am happy to have individual conversations with people that have had problems with accessing of that program . . . certainly I understand that antennas . . . don’t work. So, that was unfortunate, we should have been more careful with messaging.

Therefore, Charter not only failed to provide the thirty (30) day notice to its subscribers required by both federal law and the Franchise Agreement to which it is a party, any untimely

notice Charter did provide was false and misleading. This is an independent violation of the Franchise Agreement, as 47 C.F.R. Section 76.1603(c) treats deletion of channels as an increase in rates and requires that the notice provide an explanation for the increase in "understandable" fashion. In this case, the deletion and its effects were not "understandably" explained to customers, nor did Charter state (as was the case) that it had chosen to refuse an extension for carriage. Rather, the change was deceptively explained to customers.

B: Informational Requests Pursuant to the Franchise Agreement

I: Compliance with Ordinance 1087, the Franchise Agreement between Charter and the Town of Jackson

Section 5.1, Books and Records, of the franchise granted to Charter states that:

The Grantee agrees that the Town, upon reasonable notice to the Grantee, may review books and records at the Grantee's business office in the Town, during Normal Business Hours and on a non-disruptive basis, to ensure compliance with the terms of this Franchise or applicable law. Notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may collect and organize the necessary books and records for easy access by the Town.

The Town of Jackson provides the notice required by Section 5.1 herein that it is reviewing Charter's compliance with the following sections of the Franchise Agreement:

- 3.1 Technical Standards
- 3.5 Service to Public Buildings
- 3.8 Customer Service Standards
- 4.12 Rates and Charges
- 4.4 Quarterly Franchise Fee Reports

To be clear, not all of these requests are related to the breach. Furthermore, the Town of Jackson recognizes that confidential information is to be protected from public disclosure, provided it is reasonably marked as such.

The Town requests that you provide:

1. Internal communications regarding the thirty-day notice provision as it relates to the negotiations with Northwest.
2. Communications regarding the decision to not accept additional extensions offered by Northwest.
3. Communications regarding the decision or timing of the decision to set up the website <https://www.spectrum.com/content/codered/northwestfairdeal/en/home.html>, and the factual basis for each of the claims made on that website.
4. Your communications with Northwest Broadcasting since June, 2017.

5. A listing of complaints you have received regarding the deletion of the channels, or complaints you have received regarding the actual availability of the programming from other sources. You may redact personally identifiable information.

6. Instructions you gave to customer service representatives (or other persons designated to handle calls with respect to the deletion of the Northwest channels), including instructions as to the availability of refunds, or relief from long-term programming agreements.

7. Records showing (a) how many calls were made to the company in January and February, 2018 from Jackson Wyoming (or the smallest region of which Jackson is a part for which records are kept), by month; (b) how many calls received busy signals; (c) how many calls were dropped; (d) how many were answered within thirty (30) seconds; and (e) how many that were answered and transferred (whether by an automated system or a representative who could not address the issue) were transferred within thirty (30) seconds. Information should be provided as to how each standard was measured.

8. Records showing the company's compliance (or non-compliance) with each of the FCC's customer service standards for each quarter of 20170.

II: Notice of Request for Franchise Fee Payments and Calculation

Section 4.4, Quarterly Franchise Fee Reports, of the Franchise Agreement requires that Charter

Each payment shall be accompanied by a written report to the Town, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, of the Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System and be prepared in accordance with GAAP.

In accordance with this provision, and recognizing franchise payments from Charter have not been summarized and not accompanied by detail as required, the Town hereby requests Charter provide a written report for each quarterly franchise payment with a detailed statement in accordance with GAAP.

III: Notice of Request for an Audit

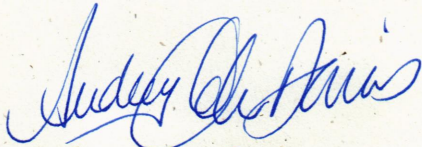
Section 4.7, Audits, of the Franchise Agreement provides that "[o]n an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's auditor or his/her authorized representative, shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise in accordance with GAAP." The Town hereby provides the required notice under this Franchise provision that it requests the records reasonably related to administration and enforcement of this Franchise to carry out said audit.

We appreciate your assistance regarding the above. If you have any questions, please feel free to call me at 307-734-1689.

Thank you.

Bresnan Communications, LLC, et al.
March 6, 2018
Page 7 of 7

Very truly yours,



Audrey Cohen-Davis
Town Attorney

AC-D/
Enclosures

cc: Mayor Muldoon and Jackson Town Council
Bob McLaurin, Town Manager
Kelly Thompson, Finance Director
Sandy Birdyshaw, Town Clerk

ORDINANCE 1087

AN ORDINANCE OF THE TOWN OF JACKSON, WYOMING, GRANTING A FRANCHISE TO BRESNAN COMMUNICATIONS, LLC, FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED, THAT: the Town Council, having determined that Bresnan Communications, LLC, locally known as Charter Communications ("Grantee") is willing to provide the services, facilities, and equipment necessary to meet the future cable-related needs and interests of the Town of Jackson, Wyoming ("Town"), and is willing to be bound by conditions of applicable law, and by binding agreement to serve the public interest, does hereby ordain as follows:

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the Town makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by the Town complies with the existing applicable State statutes, federal laws and regulations;
4. Grantee has substantially complied with the material terms of the current Franchise under applicable laws; and
5. The Franchise granted to Grantee is nonexclusive.

SECTION 1. Definition of Terms

1.1. **Terms.** For the purpose of this Franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Terms not defined herein shall have the same meaning as in the Cable Act.

A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

B. "Basic Cable Service" or "Basic Service" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.

C. "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, and as it may be further amended from time to time.

D. Cable Operator: Any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

E. "Cable System" shall have the same meaning as the term cable system in the Cable Act, except that when used in reference to Grantee, it means Grantee's cable system or any part thereof.

F. "Cable Service" or "Cable Services" shall be defined herein as it is defined under Section 602 of the Cable Act, 47 U.S.C. § 522(6), as amended.

G. "Construct, Maintain and Operate" and similar formulations shall be interpreted broadly and shall include, but not be limited to, the construction, removal, relocation, repair, maintenance and upgrade of the Grantee's Cable System, including facilities and equipment on customer premises.

H. "FCC" means Federal Communications Commission, or successor governmental entity.

I. "Franchise" means the authorization to construct and operate a Cable System to provide Cable Service granted by this ordinance.

J. "Grantee" means Bresnan Communications, LLC, or its lawful successor, transferee or assignee.

K. "Gross Revenues" means any and all revenue as determined in accordance with generally accepted accounting principles ("GAAP"), in whatever form, from any source, derived from the operation of the Cable System to provide Cable Services by the Grantee or an Affiliate of the Grantee that would constitute a Cable Operator of the Cable System under the Cable Act. Gross Revenues include, by way of example and not limitation, Basic, expanded Basic and pay service revenues, revenues from installation, rental of converters, DVR services, fees for high-definition services, activation fees, the applicable percentage of advertising sales, late charges and other fees levied upon Subscribers, or itemized on a bill, except as provided herein. Gross revenues will also include commissions or fees paid to an Affiliate advertising agency.

Gross Revenues do not include franchise fees, FCC User Fees or any generally applicable fees or taxes which are imposed on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include bad debt recorded as revenues on the books of Grantee; provided, that if revenue previously representing as bad debt is collected, this revenue shall be included in Gross Revenues for the period in which it is collected.

L. "Normal Business Hours" means hours during which most similar businesses in the community are open to serve Subscribers.

M. "Normal Operating Conditions" means service conditions in the Service Area which are within the control of the Grantee or its Affiliates. Conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

N. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

O. "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, dedicated public utility easements, or other easement held by the Town in the Service Area as shall, within its proper use and meaning, entitle the Town to permit, and the Grantee to install and operate, the Grantee's Cable System.

P. "Service Area" means the present municipal boundaries of the Town, and includes any additions thereto by annexation or other legal means.

Q. "Service Interruption" means the loss of picture or sound on one or more channels.

R. "Subscriber" means a person who lawfully receives services of the Cable System.

S. "Town" means the Town of Jackson, Wyoming or its lawful successor, transferee or assignee.

T. "Transfer" refers to a sale, transfer or assignment of the Franchise or Cable System in the Town, or a change of control, or working control of the Grantee.

SECTION 2.**Grant of Franchise; Minimum Conditions Exercise of Rights**

2.1. Grant. The Town hereby grants to the Grantee a non-exclusive Franchise to operate a Cable System to provide Cable Service in the Town, and to use the streets and Public Ways to install, construct, repair, reconstruct, maintain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property now in existence and as may be necessary and appurtenant to said Cable System for that purpose, subject to the terms and conditions of this agreement, and applicable law.

A. This Franchise is a contract. While the Town may not unilaterally alter the express contractual rights and obligations of Grantee granted hereunder except as permitted by state or federal law, an otherwise lawful exercise of the Town's generally applicable police power under Wyoming law necessary to ensure the safety, health, and welfare of the public shall not be treated as an alteration of those rights or obligations. In the event of a conflict between a provision of this Franchise and a provision of Town police power reflected in generally applicable local ordinances, rules, and regulations, local law shall be controlling, provided, however, such local law has not been preempted by any federal or state laws, rules, regulations or orders. Grantee reserves the right to challenge the provisions of any ordinance which it believes conflicts with its contractual rights, or is preempted by applicable law, either now or in the future.

B. This Franchise grant is for Cable Services only. This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the Public Way, if the Grantee provides service other than Cable Service. However, this Franchise shall not be read as a concession by Grantee that it needs authority to provide services or to pay compensation for services other than Cable Services in the Town.

C. The Grantee is responsible for ensuring that any person that performs work related to the construction, management or operation of the Cable System, including but not limited to contractors and subcontractors, does so in full conformity with the terms and conditions of Town regulations as stated in the Municipal Code and applicable law, and is responsible for their acts and omissions as if the activity had been directly performed by it. Grantee shall maintain control over any documents related to the construction, management and operation of the Cable System so that it may provide documents and respond to questions from the Town related to the same as provided for in this Franchise.

D. This Franchise shall not include or be a substitute for:

(1) Any generally applicable permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement, bond or authorization required by the Town for Public Way users in connection with operations on or in Public Way or public property including, by way of example and not limitation, street cut or construction permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

E. Unless otherwise expressly provided in this Franchise, all acts that the Grantee is required to perform under this Franchise must be performed at its own expense subject to applicable law.

2.2. Term. This Franchise shall be for a term of ten (10) years commencing on the effective date of the Franchise as set forth in Section 8.6 below. The rights, privileges and authority granted hereunder shall take effect once accepted, and shall terminate on April 21, 2025, unless terminated as provided in Section 7.

2.3. Effect of Acceptance. The Franchise becomes effective upon its unconditional acceptance by the Grantee, in a form acceptable to the Town Attorney. By accepting the Franchise, the Grantee:

A. Acknowledges and accepts the Town's legal right to issue and enforce the Franchise;

B. Accepts and agrees to comply with each provision of this Franchise consistent with applicable law; and

C. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

2.4. Minimum Conditions on Cable System Construction, Maintenance and Operation. Without limiting the powers of the Town under Section 2.1, Grantee's use of the Public Ways shall be subject to the following minimum conditions.

A. Subject to the Town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System to provide Cable Services within the Town.

B. Grantee must follow the Town's competitively neutral and non-discriminatory requirements set forth in its Municipal Code for placement of Cable System facilities in the Public Way, including the specific location of facilities in the Public Way. Within limits reasonably related to the Town's role in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Way; may deny access if Grantee is not willing to comply or fails to timely comply with the Town's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal.

C. Town may require Grantee to reasonably cooperate with others to minimize adverse impacts on the Public Way through joint trenching and other arrangements.

D. Prior to doing any work in the Public Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town as required by the Town's Municipal Code, provided such requirements are competitively neutral and non-discriminatory. As part of the permitting process, the Town may impose any conditions and regulations as are necessary for the purpose of protecting any structures in such Public Way, proper restoration of Public Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Public Way. Grantee shall pay all generally applicable fees for the requisite Town permits received by the Grantee.

E. Grantee shall comply with all federal, state and local safety requirements, rules, regulations, laws and employ all necessary devices as required by applicable law during construction, maintenance and operation of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration Standards. Grantee shall comply with all generally applicable Town construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations. Construction, installation and maintenance of the Cable System must be performed in an orderly and workmanlike manner. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property.

F. Antenna supporting structures or towers shall be designed for the proper loading as specified by the Electronics Industries Association (EIA). Antenna supporting structures or towers shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state, and local codes or regulations.

G. Work in the Public Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Public Way by, or under, the Town's authority. The

Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Public Way or other public property.

H. If during the course of the Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way, public or private property by the Grantee, it shall, at its expense, replace and restore the Public Way, public or private property to the same or better condition than existing immediately prior to such disturbance.

I. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by the Town by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas, water pipes, or any other type of structures or improvements by the Town or governmental body; but, the Grantee shall in all cases have the right to abandon its property, except where the Town directs otherwise. If funds are generally available to users of the Public Way, Grantee shall be entitled to its pro rate share of such funds.

J. The Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of such building, provided: (A) the expense of temporary raising or lowering of wires is paid by the requestor, including, if required by the Grantee, making payment in advance; and (B) the Grantee is given not less than ten (10) business days advance written notice to arrange for temporary wire relocation and no less than one hundred twenty (120) days for a permanent relocation.

K. Notwithstanding the foregoing, whenever, in case of fire or other emergency, it becomes necessary to remove Grantee's Cable System, Town may do so without prior notice.

L. The Grantee may trim trees or other natural growth overhanging any of its Cable System in the Service Area to prevent branches from coming in contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Town for any damages caused in the course of trimming, including but not limited to the cost of tree removal or replacement; or shall, in its sole discretion perform the necessary work itself to redress the damage caused. Work must be performed in a manner satisfactory to the Town (including, for example, with respect to the timing of tree replacement, and the type of tree to be planted).

M. Notices with respect to work performed subject to a permit shall be provided as required by the permit.

SECTION 3. Standards of Service

3.1. Technical Standards. The Grantee shall Construct, Operate and Maintain the System so that it functions in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time, and with any other applicable standards. The Town shall have the right to observe any tests required by FCC rules upon request. Nothing herein relieves Grantee of any other obligations it may have under applicable law to produce or provide reports to the Town or the public.

3.2. System Characteristics. As of the effective date of this Franchise, the Grantee operates a 750 MHz Hybrid Fiber-Coax Cable System. Grantee's Cable System shall, at all times, meet or exceed the system design and performance specifications required by the FCC.

3.3. Aerial and Underground Construction.

A. For all new installations, extensions, upgrades and major maintenance to existing systems, the Town will require the Grantee to underground the system as required by its Municipal Code. As such, Grantee shall construct, operate, and maintain its lines underground, but may place other equipment in vaults or on pedestals above ground where permitted in accordance with the Town's normal practices for the affected area.

B. Should the Grantee's service line be the single connection on a utility pole located within a Public Way, upon request of the Town, the Grantee shall within thirty (30) days of the request, underground its System and remove the overhead Cable System from the pole, while maintaining services. Should the relocation of the Cable System not be completed within thirty (30) days of the written request, the Grantee shall pay the Town fifty (\$50) dollars per day, subject to

applicable law, until the Cable System is removed. Provided, however, that Grantee may request an extension of the time to underground and remove its Cable System from the pole, and the Town will not unreasonably refuse to grant the extension where justified by weather conditions, or the amount of work required. The Town agrees to give Grantee reasonable notice and access to the public utilities' facilities at the time they are placed underground for the purposes of facilitating the relocation of aerial facilities to underground locations.

C. A home owner, building owner or developer may require Grantee to place facilities underground from the Public Ways in an area where the facilities could otherwise be maintained aboveground, provided the home owner, building owner or developer is willing to pay the costs therefor. The Town shall use reasonable diligence to provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Town agrees to require as a condition of issuing the permit, that the developer give the Grantee access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Notice must be received by the Grantee at least ten (10) business days prior to availability. Developer shall be responsible for expense of the digging and backfilling of all trenches.

D. Nothing in this Franchise prevents the Town or residents of the Town from requiring Grantee to participate in the plan for a local improvement district, and to relocate, underground or otherwise move or modify its facilities in accordance with the requirements for the local improvement district subject to applicable law.

3.4. Required Extensions of Service.

A. Grantee will provide service to persons throughout the Town where Grantee currently provides Cable Service. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. No person shall be refused service arbitrarily.

B. Grantee will extend its system to a point where it can provide service by a drop to a potential Subscriber at no charge to the potential Subscriber whenever (a) the extension required is less than one hundred and twenty five (125) feet; or (b) the extension required to provide service passes an average of thirty-two (32) homes per mile. However, if an area does not meet the density requirements of this Section, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence. Persons requesting service shall be charged standard drop charges where the distance from the entry point to the structure to which service is to be provided to the nearest right of way or utility easement served by Grantee is one hundred and twenty-five (125) feet or less. Grantee may charge for non-standard installations associated with providing a longer drop.

3.5. Service to Public Buildings. The Grantee shall provide Basic Cable Service to a single drop, with one converter (if necessary) to one (1) outlet free of charge at each accredited elementary and secondary school building and public library building that currently receives complimentary Cable Service as of the effective date of this Franchise, on the school's or library's request, on a voluntary basis for as long as Grantee participates in the industry supported Cable in the Classroom program.

3.6. Annexation. The Town shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its Affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days 'written notice from the Town, subject to the conditions set forth below. The Town shall also notify Grantee in writing of all new street address assignments or changes within the Service Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Town franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Town if the Town has provided a written annexation notice that includes the addresses that will be moved into the Service Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Service Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 8.3 with a copy to the Director of Government Relations. In any audit of franchise fees due under this Franchise, Grantee

shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

3.7. Emergency Use.

A. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal and state law and regulations including 47 C.F.R., Part 11, and any Wyoming State Emergency Alert System requirements. The Town and Teton County Emergency Management have joint emergency management facilities and personnel. Grantee shall provide and maintain the facilities and equipment at its headend required to permit the Town or Teton County Emergency Management to transmit emergency alerts from a point designated by the Town or Teton County Emergency Management. Grantee shall periodically test the emergency alert system to ensure it is reliable.

B. Grantee shall provide Town and Teton County Emergency Management with the name, title, email address, and 24/7 contact phone number for at least one employee who has intimate knowledge of the EAS and has the ability to resolve problems on the EAS system. Grantee shall update this information as necessary to ensure that a contact person may be reached.

C. Town shall provide Grantee with the name, address, telephone number and email address of a person who Grantee may contact with questions or issues concerning local EAS policies and procedures. As of the date of this Franchise, that person is:

Rich Ochs, Coordinator
Teton County Emergency Management
www.tetonwyo.org/em
307-732-8595
3240 S. Adams Canyon Dr.
Jackson, WY 83001

Town shall update this information as necessary to ensure that a knowledgeable contact person may be reached.

D. The Town shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. If permitted by state law, the Town agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the use by the Teton County Emergency Management Coordinator or other Town employees or agents of the Cable System for transmission of emergency alerts, including, but not limited to, reasonable attorneys' fees and costs.

3.8. Customer Service Standards.

- (1) The Grantee shall at all times meet the following minimum standards, and customer service standards for Cable Service as may be established by federal, state and local law.
- (2) Cable System office hours and telephone availability.
 1. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - a. Trained representatives of the Grantee will be available to respond to Subscriber telephone inquiries during Normal Business Hours.
 - b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Grantee on the next business day.
 2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not

exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety (90%) percent of the time under Normal Operating Conditions, as measured by the Grantee on a quarterly basis. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards in this paragraph unless an historical record of complaints indicates a clear failure to comply with these standards.

3. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three (3) percent of the time.
- (3) Installations, outages and service calls. Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five (95%) percent of the time, as measured by the Grantee on a quarterly basis:
1. Standard installations will be performed within seven (7) business days after an order has been placed. Standard installations are those that are located up to one hundred and twenty-five (125) feet from the existing distribution system.
 2. Excluding conditions beyond its control, the Grantee will begin working on Service Interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.
 3. The Grantee will provide "appointment window" alternatives for installations, service calls and other installation activities, which will be either a specific time, or at maximum, a four (4) hour time block during Normal Business Hours.
 4. The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.
 5. If a representative of the Grantee is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.
- (4) Communications between the Grantee and Subscribers.
1. Notifications to Subscribers:
 - a. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - i. Products and services offered;
 - ii. Prices and options for services and conditions of subscription to programming and other services;
 - iii. Installation and service maintenance policies;
 - iv. Instructions on how to use the service;
 - v. Channel positions of programming carried on the Cable System; and

- vi. Billing and complaint procedures, including the address and telephone number of the local Town's cable office.
- b. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

- a. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, Basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.
- b. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty days from receipt of the complaint.
- c. Refund checks will be issued promptly, but no later than either (a) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (b) the return of the equipment supplied by the Grantee if service is terminated.
- d. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

- (5) During the first two years of this franchise, Grantee shall meet with the Town every six (6) months, or quarterly upon request, to discuss compliance with the customer service requirements set forth in this section.

3.9. Educational and Government ("EG") Access Channels.

A. The Grantee agrees that it will carry the Town Council meetings on its existing local origination channel until such time as the Town has determined that it would like Grantee to make available one (1) downstream channel to be used for educational and governmental (EG) non-commercial use. The Grantee and the Town will meet from time to time to discuss the Town's plans to program the EG access channel. Once the Town has passed a resolution requesting that Grantee begin providing the EG access channel and has provided a letter to Grantee identifying those entities or persons who will be responsible for providing access programming, Grantee shall make the EG access channel available within one hundred twenty (120) days.

B. The EG channel shall be placed on the lowest tier of service available to Subscribers. There shall be no charge from Grantee for use of the EG channels, and no additional charges to any Subscriber to view the EG channels. The Grantee and the Town shall cooperate to ensure that the quality of the EG Channels meets FCC technical standards, including those applicable to the carriage of EG Channels; provided however, that the Grantee is not responsible for the production quality of EG programming.

SECTION 4.

Compensation; Regulation by the Town

4.1. **Franchise Fee.** As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Public Way to provide Cable Service, the Grantee shall pay as a franchise fee to the Town, throughout the duration of this

Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of the franchise fee shall commence as of the effective date of this Franchise.

4.2. Payments. The Grantee's franchise fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than sixty (60) days after said dates.

4.3. Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.4. Quarterly Franchise Fee Reports. Each payment shall be accompanied by a written report to the Town, verified by an authorized representative of the Grantee, containing an accurate statement in summarized form, as well as in detail, of the Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System and be prepared in accordance with GAAP.

4.5. Annual Franchise Fee Reports. Grantee shall, upon request, within sixty (60) days after the end of each year, furnish to the Town a statement of the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. The statement shall be audited by a certified public accountant, who may also be an officer of Grantee, prior to submission to the Town.

4.7 Audits. On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's auditor or his/her authorized representative, shall have the right to conduct an independent audit of the Grantee's records reasonably related to the administration or enforcement of this Franchise in accordance with GAAP. If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, Grantee shall, subject to applicable law, pay the reasonable costs of the audit, such cost not to exceed two thousand (\$2000) dollars for the audit period. The Town's right to audit and the Grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the Town.

4.8 Late Payments. In the event any payment due quarterly is not received within sixty (60) days from the end of the calendar quarter, the Grantee shall pay interest on the amount due, at the prime rate as listed in the Wall Street Journal on the date the payment was due, calculated from the date the payment was originally due until the date the Town receives the payment.

4.9 Tax Liability. The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or will be required to be paid by businesses by any law of the Town, the State or the United States including, without limitation, sales, use or other taxes, business license fees or other payments. Payment of the franchise fees under this Franchise will not exempt the Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of the Grantee that may be lawfully imposed by the Town. Such other license fee, tax, levy, assessment or charge shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

4.10 Financial Records. The Grantee agrees to meet with a representative of the Town upon request to review the Grantee's methodology of record-keeping, financial reporting, the computing of franchise fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

4.11 Payment on Termination. If this Franchise terminates for any reason, the Grantee shall file with the Town, within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year.

4.12 Rates and Charges. The Town may regulate Grantee's rates and charges and order refunds to the extent permitted under applicable law.

4.13 Renewal of Franchise.

A. The Town and the Grantee agree that renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless

the procedures and substantive protections have been preempted and superseded by the provisions of any subsequent provision of federal, state or local law.

B. In addition to the procedures set forth in the Cable Act at 47 U.S.C. § 546(a) (assuming those procedures apply), the Town agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the current Franchise term. The Town further agrees that final assessments shall be provided to the Grantee promptly upon completion of the proceeding contemplated by 47 U.S.C. § 546(a) so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this section, the Grantee and the Town agree that at any time during the term of the current Franchise, while affording the public appropriate notice and opportunity to comment, the Town and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the current Franchise and the Town may grant a renewal. The Grantee and the Town consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

4.14 Conditions of Sale. The Grantee and the Town agree that in the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Town further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its existing Franchise; however, in no event shall such authorization exceed a period of time greater than six months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Town, or the transferee or assignee is unwilling to enter into a franchise acceptable to the Town may avail itself of any rights it may have pursuant to federal, state or local law; it being further agreed that the Grantee's continued operation of its Cable System during the six month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Town or the Grantee.

4.15 Transfer of Franchise.

A. No Transfer may occur without the prior written consent of the Town, such consent not to be unreasonably withheld or denied. No consent shall be required for a Transfer to an entity that is controlling, controlled by or under common control with the Grantee, to a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the Cable System in order to secure indebtedness, provided that such instruments do not permit any entity to operate the Cable System without first obtaining a franchise from the Town.

B. An applicant seeking approval of a Transfer must file an application with the Town that contains such information as required by federal laws and regulations, including the legal, financial and technical qualifications of the applicant to own the Cable System in the Town. The entities involved in the transaction which will result in the Transfer must promptly respond to requests for information in accordance with federal law.

C. An application will not be approved unless the entity that will be the Grantee after the Transfer is willing to unconditionally accept all the lawful terms and conditions of the Franchise.

D. If the Town has not taken action on the Grantee's request for Transfer within one hundred and twenty (120) days after receiving such request, consent shall be deemed given by the Town unless the Grantee, Town and the applicant for the Transfer agree otherwise. If a Transfer proceeds without the consent of the Town, the Town may determine that such failure to obtain consent is a material breach of this Franchise.

**SECTION 5.
Books and Records**

5.1. Generally. The Grantee agrees that the Town, upon reasonable notice to the Grantee, may review books and records at the Grantee's business office in the Town, during Normal Business Hours and on a non-disruptive basis, to ensure compliance with the terms of this Franchise or applicable law. Notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may collect and organize the necessary books and records for easy access by the Town. Records include, but are not limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth in this Franchise, Grantee shall not be required to disclose information which it

reasonably deems to be proprietary or confidential in nature. The Town, or any person acting on the Town's behalf, will treat information that is a confidential business record within the meaning of Wyoming law, and clearly marked as such, as confidential to the extent permitted under Wyoming law. Grantee will exercise due care in marking only information that is confidential as confidential. The Town will only disclose confidential information to employees, representatives, and agents that have a need to know, in order to enforce the provisions of this Franchise. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6.

Insurance and Indemnification

6.1. Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. The Grantee shall provide a Certificate of Insurance designating the Town as an additional insured. Such insurance shall be non-cancellable except upon thirty (30) days prior written notice to the Town.

6.2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Town, its officers, boards and employees, from and against any liability for damages and for any liability or claims (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give the Grantee written notice of its obligation to indemnify the Town within ten (10) days of receipt of a claim or action pursuant to this section. If a claim arises, the Town shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Town shall cooperate fully herein. If the Town determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Town. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Town for any damages, liability or claims resulting from the willful misconduct or negligence of the Town or for the Town's use of the Cable System including, but not limited to, for EAS or use of the Cable System by the Town for the education and access channel provided under Section 3.9 of this Franchise.

SECTION 7.

Enforcement and Termination of Franchise

7.1. Notice of Violation. In the event the Town believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the nature of the alleged noncompliance.

7.2. Remedies Cumulative. The remedies specified in this section may be used in combination or individually, and are in addition to remedies available to Town or Grantee under law and equity. Nothing in this section prevents either party from seeking appropriate relief from a court or agency of competent jurisdiction.

7.3. The Grantee's Right to Cure or Respond. The Grantee has thirty (30) days from receipt of the notice described in Section 7.1:

- A. To respond to the Town, contesting the assertion of noncompliance and describing in detail the basis for that contention;
- B. To cure such default, and to provide proof of the cure to the Town; or
- C. In the event that default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default as expediently as possible and notify the Town of the steps being taken and the projected date that the default will be cured.

7.4. Public Hearing and Enforcement.

- A. If within thirty (30) days Grantee fails to respond to the notice of violation described in Section 7.1, pursuant to the procedures set forth in Section 7.3, or if the alleged default is not remedied within the thirty (30) day period or the date projected under Section 7.3(C), the Town may schedule a public hearing to investigate the default. The public hearing shall be held at the next regularly scheduled meeting of the Town, which is scheduled at a time which is not less than five (5) business days. The Town shall notify the Grantee in writing of the time and place of such hearing, specifically identify the issues to be considered at the hearing, and provide the Grantee with an opportunity to be heard.

B. Subject to applicable federal, state and local law, if the Town, after such meeting determines that the Grantee is in default of any provision of the Franchise, the Town may:

(1) Seek specific performance of any provision, which reasonable lends itself to that remedy as an alternative to damages;

(2) Commence an action at law for monetary damages or seek other equitable relief; or

(3) In the case of a substantial default of a material provision of the Franchise, declare that this Franchise shall be revoked pursuant to Section 7.5.

C. This provision shall not be read to prevent the Town from scheduling other hearings, or conducting additional investigations, or resolving disputes through negotiations, or permitting Grantee additional time to cure defects or to respond to notices. Without limiting any other provision of this Franchise, the Town may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

7.5. Revocation.

A. If the Town seeks to revoke the Franchise after following the procedures set forth in Sections 7.1 - 7.4 above, the Town shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee has ninety (90) days from the notice to object in writing and to state its reasons for the objection. If the Town has not received a satisfactory response from the Grantee, it may seek termination of the Franchise at a public meeting. The Town shall cause to be served upon the Grantee, at least ten (10) days prior to a public meeting, a written notice specifying the time and place of the meeting and stating its intent to request the termination.

B. At the designated meeting, the Town shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which has the power to review the decision of the Town as provided by law.

7.6. Any decision of the Town under this Section 7 shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Town *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

7.7. Notwithstanding the above provisions, the Grantee does not waive any of its rights under applicable law or regulation.

7.8. **Force Majeure.** The Grantee shall not be deemed in default of provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond the Grantee's control or the unforeseeable unavailability of labor or materials. This provision includes, but is not limited to, severe or unusual weather conditions, fire, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached.

7.9. **Technical Violations.** The parties agree that it is not the Town's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breaches or violations of the Franchise or local cable ordinance, where a violation or a breach by the Grantee of the Franchise or local cable ordinance was good faith error that was promptly corrected and resulted in no or minimal uncured negative impact on the Town or customers within the Service Area.

7.10. **False Statements.** Any false or misleading statement or representation in any report required by this Franchise, not including clerical errors or errors made in good faith, may be deemed a material breach of this Franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise and applicable law.

SECTION 8.
Miscellaneous Provisions

8.1. Actions of Parties. In any action, by the Town or the Grantee that is mandated or permitted under the terms of this Franchise, the party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, approval or consent shall not be unreasonably withheld.

8.2. Equal Protection. If any other provider of Cable Services or video services is lawfully authorized by the Town or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the Town Public Way, the Town shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Town fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Town be deemed expired thirty (30) days after written notice to the Town. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

8.3. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Town or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the Town shall be addressed as follows:

Town of Jackson
 PO Box 1687
 Jackson, WY 83001
 ATTN: Town Administrator
[ADD EMAIL]

The notices or responses to the Grantee shall be addressed as follows:

Bresnan Communications, LLC
 PO Box 2650
 Jackson, WY 83001

with a copy to:

Charter Communications
 Attn: Vice President of Government Affairs
 12405 Powerscourt Drive
 St. Louis, MO 63131

The Town and the Grantee may designate another address or addresses from time to time by giving notice to the other.

8.4. Descriptive Headings. The captions to sections are intended solely to facilitate the reading. They shall not affect the meaning or interpretation of the text herein.

8.5. Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Town.

8.6. Effective Date. The effective date of this Franchise is April 22, 2015, pursuant to the provisions of applicable law. This Franchise shall expire on April 21, 2025, unless extended by the mutual agreement of the parties.

8.7. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

8.8. **Governing Law.** This Franchise shall be governed and construed in accordance with the statutes and laws of federal law and the State of Wyoming.

8.9. **Venue.** In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Teton, or, where otherwise appropriate, exclusively in the United States District Court for Wyoming.

8.10. **Sovereign Immunity.** The Town does not waive its sovereign immunity by entering into this Franchise, and fully retains all immunities and defenses provided by law with respect to any action based on or arising out of this Franchise.

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on

June 26, 2015

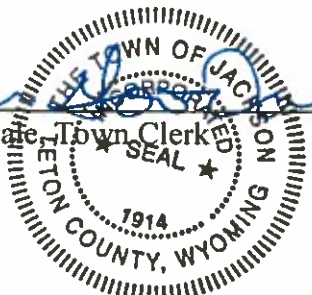
Town of Jackson, Wyoming

Signature: _____

Name/Title: Sara Flitner, Mayor

ATTEST:

Olivia Goodale
Olivia Goodale, Town Clerk



Bresnan Communications, LLC I/k/a Charter Communications

Signature: _____

Name/Title: VP GOVERNMENT AFFAIRS

ATTESTATION OF TOWN CLERK

STATE OF WYOMING

COUNTY OF TETON)ss.

TOWN OF JACKSON

PASSED 1ST READING THE 16TH DAY OF MARCH, 2015.

PASSED 2ND READING THE 13TH DAY OF APRIL, 2015.

PASSED AND APPROVED THE 20TH DAY OF APRIL, 2015.

I hereby certify that the foregoing Ordinance 1087 was duly published in the Jackson Hole News & Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming on the 22nd day of April, 2015.

I further certify that the foregoing Ordinance was duly recorded on page 173 of Book 7 of Ordinances of the Town of Jackson, Wyoming.

Olivia Goodale
Olivia Goodale, Town Clerk

PAGE INTENTIONALLY LEFT BLANK





Mary Roehr

Director, Government Affairs

February 16, 2018

Via Federal Express and

Email acohendavis@ci.jackson.wy.us

Ms. Audrey Cohen-Davis
Town Attorney
Town of Jackson
150 East Pearl Avenue
Jackson WY 83001

Dear Audrey:

Thank you for reaching out to Charter concerning Northwest Broadcasting, Inc.'s ("Northwest") decision to pull the authorization for the signal of KPVI (NBC) from the Jackson channel lineup. Charter understands your frustration and regrets the impact of Northwest's decision. We hope to resolve the matter quickly, so our customers can again receive KPVI programming at a cost that is reasonable.

I will attend the town's Tuesday, February 20, workshop and welcome the opportunity to discuss the situation further. In the meantime, the company would like to correct some misinformation coming from Northwest Broadcasting (the parent company of KPVI) and its representatives. Charter did not pull the KPVI signal as their leadership has led you to believe. At 5:00 p.m. Eastern Standard Time ("EST") on Friday, February 2, 2018, two days after the agreement allowing Charter to carry Northwest's broadcast signals was originally set to expire, Northwest pulled the authorization for the broadcast signals from all of its stations from Charter's lineups, including KPVI. Charter was hoping to reach a fair deal in advance of any interruption in service, and we are disappointed that Northwest refused to come off its demand for a rate that is higher than what we have ever paid any other broadcaster.

The parties originally commenced negotiations last October (for the contract that was set to expire on January 31, 2018), but Northwest's initial proposal was without precedent: it would have increased carriage fees substantially over current rates, to a per subscriber level more than double the rate Charter pays any other broadcaster in the entire country. At the time Northwest pulled its authorization, it wanted an 80% increase in the rate we pay for its programming, despite a more than 13% decline in its stations' ratings over the last five years. While Charter was prepared for a reasonable increase in carriage fees, it could not and would not agree to such an unwarranted increase - an increase that would substantially and unfairly impact our customers.

Requests for exorbitant increases in fees and an unwillingness to reach a reasonable resolution of these issues has become a pattern with Northwest in programming carriage negotiations. In the last several years alone, Northwest's tactics have led to blackouts with video distributors around the country including with Verizon FiOS and Cable One in 2017, and both DirecTV and Dish Network a few years before. On the other hand, Charter has negotiated fairly and successfully for carriage with hundreds of

Ms. Audrey Cohen-Davis
February 16, 2018
Page 2

broadcast stations and has not had a blackout with even one of any other broadcaster's top four (ABC, NBC, CBS or FOX) affiliated stations ever.

On Friday, February 2, after the parties agreed to two 24-hour extensions, Charter made an offer that would have increased the carriage fees over its prior proposals, and asked for an extension through Sunday, February 4, so that customers would be able to watch the Super Bowl, with a promise to work through the entire weekend to attempt to conclude a long-term deal. Northwest rejected this offer, countered with a proposal that was still nearly double existing rates, and offered only a seven-hour extension (to midnight of February 2nd). Northwest refused Charter's request, and negotiations under the terms of the agreement came to an end.

Under federal law, Charter cannot retransmit broadcast programming without explicit consent. Northwest is well aware of the law and is misleading you by saying that Charter pulled the signal. In fact, its own message to customers acknowledged that Charter had no right to continue carrying the programming. Any assertion by Northwest to the contrary is an intentional falsehood; we asked directly and unambiguously for an extension beyond the Super Bowl and they would not afford that convenience to our customers.

Given the ongoing negotiations, it was not possible for Charter to provide advance notice to subscribers. All along we hoped for a mutually beneficial resolution and with a series of one-day extensions, advance notice to our customers would have only created confusion. Once Northwest discontinued its authorization for us to carry KPVI, Charter immediately provided notice to its affected subscribers, making on-air announcements within minutes, sending emails, and creating a website where customers could get additional information about the blackout. Charter has also sent a courtesy notice to the Town concerning this issue. Under these circumstances, Charter has fully complied with the applicable notice provisions in its franchise in Jackson, and the related rules of the Federal Communications Commission do not require advance notice when the circumstances are outside the cable operators' control.

Although it now alleges that it was Charter's decision to discontinue carrying its signals, Northwest itself posted a message shortly after talks broke down acknowledging that negotiations had been proceeding "in good faith," but that they had reached "a standstill" and that consequently (as mentioned earlier) "Charter no longer has the rights to carry our programming." A representative example of Northwest's messaging, which also appeared on KPVI, is attached.

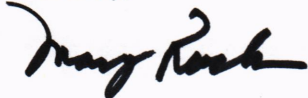
We continue to work toward a resolution of the dispute. In the meantime, we are doing all that we can to minimize the impact on customers. More information about this Northwest initiated blackout can be found at NorthwestFairDeal.com. We are sorry for the disruption that Northwest has caused and will

Ms. Audrey Cohen-Davis
February 16, 2018
Page 3

continue to work toward reaching a fair agreement that is in the best interests of our customers. We value the partnership we have forged with Jackson, appreciate the rights granted by our franchise to serve the town, and look forward to continuing to provide the best cable programming, entertainment and communications services to our customers and your constituents.

Please let me know if you have any additional questions. Thank you.

Sincerely,



Mary Roehr
Director, Government Affairs

cc: Mr. Bob McLaurin, Town Manager – *Via Email* info@ci.jackson.wy.us

Redwood Television Partners and Charter have been in good faith negotiations to carry our CBS and NBC programming on their cable system for some time. Unfortunately, the negotiations are at a standstill and Charter no longer has the rights to carry our programming. Both KVIQ and KIEM will be removed from the Charter cable systems as of 5pm on Saturday, February 3, 2018. We offer our sincere apologies to you for this disruption in your service.

×



**Delta
Mattress & Sofa
Outlet Store**



To Whom it May Concern:

I serve as the Chief Executive Officer for Northwest Broadcasting, Inc. ("Northwest"). I affirm that the following is a true and accurate representation of the events surrounding the negotiations between Northwest and Charter Communications, Inc. d.b.a. Spectrum ("Charter") to renew or execute a new agreement for Charter to carry Northwest's channels on Charter's cable system.

Northwest operates the channels KYMA and KSWT, the affiliates of NBC and CBS respectively in Yuma, Arizona and its surrounding areas. In addition, Northwest owns or operates stations in Eureka, CA, Medford OR, Yakima-Tri Cities, WA, Idaho Falls/Pocatello, ID, Spokane, WA, Greenville/Greenwood, MS, Binghamton, NY and Syracuse, NY. On December 20, 2016, following the acquisition of Time Warner by Charter, Charter exercised the right granted by Northwest to Time Warner, to extend the then existing Northwest/Time Warner retransmission consent agreement ("Contract"). The term of the Contract expired on January 31, 2018.

Eight months prior to the expiration of the Contract, Northwest reached out to Charter to begin negotiations to renew the Contract, or execute a new agreement, to allow Charter to continue carrying KPVI. I was personally involved in all negotiations with Charter regarding the Contract. Approximately two weeks before the expiration of the Contract, Charter gave Northwest an oral contract proposal, but Charter did not put its proposal in writing until 4:00pm Eastern time on February 2, 2018, two days after the existing agreement had expired.

Despite the expiration of the agreement and the lack of a written proposal from Charter, Northwest agreed to multiple 24 hour extensions through February 2, 2018 in the hope of reaching an agreement with Charter. As mentioned above, Charter finally submitted a written proposal at 4:00pm Eastern time on February 2, 2018 at which point Northwest offered an extension through February 3, 2018, to allow it time to review and respond to Charter's written proposal. Charter requested an extension to February 5, 2018 so its customers could watch the Super Bowl, but that request also stated that on February 5, 2018, Charter would pull KPVI from its cable system. Northwest denied Charter's request, and again offered to extend to February 3, 2018 to allow negotiations to continue. Northwest told Charter if an extension past February 3, 2018 was necessary, Northwest would be happy to discuss it. At approximately 4:50p.m. Eastern time, Charter refused Northwest's offer to extend the Contract to February 3, 2018, and told Northwest that Charter was removing KPVI (and all other channels covered by the Contract) at 5:00p.m. Eastern time. Charter removed KPVI from its cable system at 5:00p.m. Eastern time.

Not only did Charter not ask for a 30-day extension to the Contract at any point in the negotiations, it did not ask for any extensions prior to the original expiration date – January 31, 2018 – of the Contract. At the time Charter removed KPVI from its cable system, Northwest was willing to grant Charter further extensions to carry the channels. Northwest never had any intent of denying Charter from carrying any of its channels, including KPVI, on Charter's cable system.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 26, 2018.

A handwritten signature in blue ink, appearing to be "B. Brady", is written over a horizontal line.

Brian Brady, Chief Executive Officer
Northwest Broadcasting, Inc.

From: Joan Anzelmo
To: [Jim Stanford](#); [Don Frank](#); [Hailey Morton Levinson](#); [Bob Lenz](#)
Subject: Thank you for your hearing re Spectrum. listening
Date: Tuesday, February 20, 2018 3:27:36 PM

Spectrum is lying,their messages are still on our TVs with incorrect info about watching on antennae and via app

Thanks again.
Joan Anzelmo

From: Joan Anzelmo
To: [Jim Stanford](#)
Subject: Charter/Spectrum lying to us in Jackson
Date: Sunday, February 11, 2018 4:17:51 PM

Hi Jim,
Hope you are well.

I know you and the Council have battled with Charter/Spectrum previously. Seems now is the time to band with the other 11 communities who have had their NBC or other network affiliates owned by Northwest cut off with no notice, days before Super Bowl and the Olympics.

According to this story in OR, Charter/Spectrum pre-meditated cutting off the NBC channels. They bought their propaganda website FairDeal two weeks prior!
<http://www.mailtribune.com/news/20180209/squabble-leaves-tv-viewers-in-dark>

Letter from Northwest CEO, worthwhile read and verifies Spectrum was required to give 30 day notice which they did not and also customers can insist on a refund.
<http://www.fox26medford.com/bring-kmvu-back/>

Another thing I wanted to pass along, the message on my TV from Spectrum incorrectly tells subscribers they can watch KPVI (NBC) free with an antennae- not true in this area! And that people can watch the Olympics online or via the NBC Sports App. Again, not true!!!

And get this, I tried to use the NBC online web platform and also the NBC Sports app. to view. Both require you to identify your TV provider and then sign in with your credentials. I did this and the online message stated I was not subscribed to NBC and was denied access. And I presume Charter/Spectrum went to some trouble to make sure all of us with Northwest Broadcasting NBC affiliates could not view online! Really heinous.

The Northwest CEO heads to DC tomorrow to raise this with Members of Congress.

Chartet/Spectrum has been lying to all of us. Hope the Town takes this on as appropriate and as other towns are doing.

Thank you.

Joan Anzelmo

From: Frank Fanning
To: [Hailey Morton Levinson](#)
Subject: Spectrum
Date: Monday, February 5, 2018 7:42:50 PM

Hello Hailey

In the wake of the outrageous and indignant high handed actions of Spectrum in violating their contracts with myself and your other constituents, please advise actions which you may be taking or other appropriate to petitioning for the revocation of Spectrum's broadcasting rights in our area.

Many thanks

Frank Fanning
constituent

Frank Fanning


From: lance@ [REDACTED]
To: [Pete Muldoon](#)
Cc: [Town Council](#); lance@ [REDACTED]
Subject: Spectrum and Northwest Broadcasting Negotiations
Date: Tuesday, February 13, 2018 9:07:50 AM

Pete and

Can you comment on the ABOMINATION of this situation?

We would like to see what the town is communicating to Spectrum (see below)

Thank you

Lance

----- Forwarded message -----

From: **Brian Brady** <brady@northwestbroadcasting.com>
Date: Sun, Feb 11, 2018 at 2:19 PM
Subject: RE: Spectrum and Northwest Broadcasting Negotiations
To: Lori Z Roux [REDACTED]

this is in response to my previous email that you can view below...

Lori, that is the best analogy I've heard and frankly I agree with it. Northwest didn't demand a 75% increase which they've claimed. In fact we didn't demand anything, this was a negotiation until they refused to negotiate and pulled the stations down. They have said things about Northwest, the only thing that's true is that we have been in a number of tough retrans negotiations over the years, we never denied that. However as a small company Northwest has done deals with 20 plus large video providers over the last year. Northwest offered Spectrum the same terms and rates as all of those deals. What makes Spectrum different? They stopped negotiating and pulled the stations down then tried to convince folks like yourself that Northwest did it. That is just not true. We extended another company we were working with 8 times and completed a deal on the same day Spectrum pulled the stations down. We extended another one to the same day and time we offered Spectrum and extended them a third time to avoid disrupting their subscribers. If we did that for others why would we not do it for Spectrum? The fact is we did and they refused it. Doesn't it seem odd to you that if Spectrum wanted to get this resolved as their customer service center says, then they would be communicating with us and we would collectively be working toward a resolution? We have not heard from them since they pulled the stations down. I'm sorry you are in the middle of this, it is the last thing I want. It is difficult to get a deal done when the other side refuses to negotiate. Brian

Below is a recent post on this issue:

First let me apologize again to all the Spectrum customers who have been affected by Spectrum's abrupt termination of any negotiations with Northwest. This should have remained a private issue between two companies without Spectrum using their unsuspecting subscribers as pawns to gain leverage on Northwest. For the record when Northwest offered Spectrum a second extension on February 2nd, their response was, "We are taking your stations down in the next ten minutes" and they hung up the phone and we have not heard from them since.

While we wait, many of you have missed the Super Bowl, News and other entertainment programming. Their call centers tell people that we are in current negotiations. This is another fabrication in an effort to keep you from cancelling or refusing to give you a refund. Now, their unbridled corporate arrogance, that same arrogance that started all of this, is about to deny many of you the opportunity to watch the Winter Olympics, Daytona 500 and March Madness after that.

Their strategy is to continue calling Northwest names and posting additional stories about our past retrans negotiations to their "northwestfairdeal" web site in an effort to make you think that somehow Northwest is the "bad guy". Truth is they created this disruption because they just don't care about you. We found out yesterday that they purchased the domain name for the "northwestfairdeal" web site on January 18th which happened to be the same time they told Northwest they would not counter Northwest's proposal to them and then disappeared for two weeks. This was a set up and Spectrum's subscribers were just collateral damage.

While many may believe their propaganda, a large majority of you don't. The way they are treating Northwest is the same way they are treating you as customers. Because of their size they don't care about their subscribers or business partners. They are the bully on the block who thinks their subscribers are nothing more than an ATM machine from which they can extract money at a moment's notice or with no notice at all, as I'm learning.

When Tom Rutledge made what appears to be a premeditated decision to take down Northwest's stations he knew or should have known that he was in violation of his own Annual Customer Notification Policy which is filed at the Federal Communications Commission, a copy which is on Spectrum's web site <https://www.spectrum.com/policies/annual-notice.html>. In the section titled, Programming, it states, Spectrum will provides notice to its customers at least thirty (30) days in advance of the deletion of any programming service, channel assignment changes or rate increases. Clearly that's not the case here.

In spite of what Spectrum's customer service people are telling you, you have a right to a refund. While this is not going to bring back the programming you have missed or will want to watch this weekend or beyond you should not be paying for something Spectrum is not delivering to you. Each and every one of you should demand that you get a refund for every day that you are not getting the programming you are paying for.

The City of Yuma, Arizona has put Spectrum on notice that it is seeking damages for every day that Spectrum blacks out local channels and is demanding that Spectrum credits Yuma subscribers for dropping the channels without notice. If you don't

get the full refund you deserve, ask the Mayor's office in your town for help, as the Spectrum subscribers did in Yuma. If that doesn't work send an email to the FCC and your Congressman. I am heading to Washington, DC next week armed with your stories of how Spectrum treats you. There are 450,000 homes that are affected. If enough of you speak up, they will listen.

In the meantime continue to email or call Tom Rutledge and express your dissatisfaction with how he is treating you. It is highly unlikely he will take the time to respond but maybe he'll have one of "his people" get back to you. I am sorry that Tom has put you all in the middle of a negotiation that should have remained private and without disruption to you.

tom.rutledge@chartercom.com [203-905-7999](tel:203-905-7999)

Brian

Brian Brady

President and CEO

Northwest Broadcasting, Inc

From: Lori Z Roux [mailto:]

Sent: Sunday, February 11, 2018 12:07 PM

To: Tom.Rutledge@charter.com; Thean, Vansothy <Vansothy.Thean@charter.com>; Carlos.Vazquez@charter.com; Derek.Hill@charter.com; Brian Brady <brady@northwestbroadcasting.com>; Jon Rand <rand@northwestbroadcasting.com>

Cc: editor@jhnewsandguide.com

Subject: Spectrum and Northwest Broadcasting Negotiations

Gentleman,

It appears that there has been no headway in the negotiations between Spectrum and Northwest Broadcasting.

Amazing, seeing as South Korea and North Korea have been able to coordinate their Olympic representatives in to ONE team competing for the Korean Peninsula.

Sincerely,

Lori Roux

Wilson, WY

This letter has been copied to the editor of the Jackson Hole News and Guide

Lance Cygielman

Lance@ [REDACTED]



Virus-free. www.avast.com

From: Steve Walsh
To: [Bob Lenz](#)
Subject: Spectrum NBC issue
Date: Sunday, February 18, 2018 7:02:45 PM

Dear Bob

I understand that the town council will be discussing the issue between Spectrum and Northwest regarding NBC. My personal feeling is that instead of taking sides since in all probability they are both at fault in this matter we should look for a better solution. I am extremely disappointed that I am missing the olympics and probably some of my favorite shows after the olympics are over.

I feel that the residents of Teton county would be better served if the council could explore asking the FCC if it could allow Spectrum to drop NBC in Idaho for an NBC affiliate in Wyoming. This would be a great opportunity for us to finally have access to Wyoming news instead of just Idaho. I understand that Spectrum could make this change quickly if the FCC allowed it.

Steve Walsh
[REDACTED]
[REDACTED]

Sent from my iPad

DECLARATION OF ELIZABETH L. MARTYN

DECLARATION OF ELIZABETH L. MARTYN

1. I serve as the City Attorney for the City of El Centro, California. I affirm that based upon both my personal knowledge and information and belief, the following is a true and accurate representation of the events surrounding the removal of KYMA and KSWT, the local affiliates of NBC and CBS respectively, from Charter Communications, Inc. ("Charter") cable system in El Centro.

2. Charter operates in El Centro under a state video services franchise issued to its subsidiary, Time Warner Cable Pacific West LLC, by the California Public Utility Commission

3. El Centro is authorized under California's video franchising law (DIVCA) to enforce customer service standards and take other actions.

4. KYMA and KSWT were included in the channel lineup in El Centro, and were removed on February 2, 2018 without prior notice.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated March 15, 2018


Elizabeth Martyn, City Attorney
City of El Centro, California